United States Court of Appeals for the Second Circuit

APPENDIX

77-1150

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

B P/S

UNITED STATES OF AMERICA,

Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume XII—Pages A-7481 to A-8160

UNITED STATES COURT OF APPEALS
FILED
MAY 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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Request No. 33 is denied, except as charged.

Request No. 34, you use the word "integral part of the scheme."

The cases don't sustain an integral part of the scheme. It was part of the scheme.

In addition, I think all these mailings involve mailings of the money. I can't think of a larger part of the scheme than mailing your money in to buy the property.

MR. ARKIN: They don't all involve the money.

MS. HYNES: 18 and 2 do, I believe, are letters from Rio Rancho which may reflect resale or something.

18 are payments, your Honor.

THE COURT: Request No. 35 is denied, except as charged.

Request No. 36 is denied, except as charged.

Request No. 37 is denied.

MR. FLEMING: May I speak to that?

THE COURT: That is the Securities & Exchange thing. I am not going into a discussion with this jury about what a filing under the SEC regulations requires, especially since it is true that while the registration goes to the sale of the stock, the whole purpose of the

report is to divulge your business so the person who buys the stock can have some way of evaluating it.

It is too complicated to make any --

MR. FLEMING: That's why, if your Honor please, I guess I take responsibility for this specific request, I made it as simple as I could.

There is a difference, and obviously --

THE COURT: But there is also a similarity, because the prospectus has to tell the purchaser what the business is all about --

MR. FLEMING: We all know --

THE COURT: -- upon which you make the determination as a purchaser whether you want the stock or not, in addition to pro forma, you know, auditing statements and what not.

I am going to deny it.

(Pause)

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THE COURT: Request number 38 is denied except as charged.

Request number 39 is denied except as charged.

Request number 40 is denied except as charged, and I should tell you I will give a much shorter version.

MS. HYNES: Your Honor, with respect to request number 39, I believe that there must be references that are being made here as to the testimony of Mr. Perlmutter and with respect to the testimony of Mr. Perlmutter, in addition to Mr. Graham, who were the only character witnesses that I can recall. Mr. Perlmutter began to talk about Mr. Hoffman and said he really didn't know Mr. Hoffman that well and your Honor said, well, you know, we can't have the testimony, he was guessing.

We really don't have testimony with respect to all of the defendants. We have no testimony in this record with respect to Mr. Hoffman.

THE COURT: Whatever the testimony is, I will grant it as charged which will be the standard charge of mine as you will find in Mendlinger, I think. Mendlinger had character witnesses. You cited Mendlinger frequently in your requests and you will find my standard character witness charge.

Request number 41 is denied except as charged.

Request number 42 is denied except as charged.

MR. FLEMING: I believe that completes them.

THE COURT: You want to go home?

MR. FLEMING: No, I have two comments, if your Honor please.

With regard to instructions on good faith, we feel very strongly that it is the government's burden of proof to prove bad faith.

THE COURT: The government admits that.

MR. FLEMING: We so often run into instructions where the way they are given, good faith, the defendant can rely on good faith --

THE COURT: You mean it puts the burden on the defendant?

MR. FLEMING: That's what I am trying to say.

THE COURT: No, the government's requests to charge. I was surprised that you and the government were pretty well seeing eye to eye in that area.

MR. FLEMING: We were. That's the specific thing on burden of proof about bad faith rather than good faith.

THE COURT: There will be no charge that will indicate there is a burden on the defendants to show good faith.

You prove it in order to negative the government's

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burden.

MR. FLEMING: The government really has to prove bad faith.

THE COURT: Yes, but you put it in to dilute or disprove what they have offered on their case to show bad faith.

MR. FLEMING: Exactly.

THE COURT: It happens to be good faith or called good faith.

MR. FLEMING: Right. I did not understand whether your Honor was going to give a charge in your Honor's words on what generically is called this recklessness business.

We have submitted an instruction based on the Jolie case and the Jewel case, but we have not submitted that because we want it. We do not believe that this case lends itself to that type of instruction.

It seems to us that the government's position --

THE COURT: I think I said when I was ruling on somebody's request to charge, let's see where I have it because I wrote it out --

MR. FLEMING: I think it was in connection with the government's requests, your Honor. I believe it is request --

THE COURT: I made some mention of it in relation to your request number 16, page 2, where you cite Scott and Region Office Supply.

Also in regard to one of the government's requests --

MR. DEVORKIN: Request number 7, your Honor.

THE COURT: The record indicates I made a reference, I don't think this case deals with truths or facts. I think the case deals with statements and opinions and the issue for the jury is did these defendants have a right or they did not have a right to do or say what they did in view of all the available material as to growth, investment and what-not.

After all, for example, on real estate, I won't charge the jury on the liquidity of real estate. There were times when real estate was as liquid as running water. There were other times when real estate, if any of you have lived through the depression would know, that it was nothing.

I can't charge the jury. This is a matter which they have to determine by my giving the general guidelines to evaluate it, but I don't know of -- and I thought I indicated I wasn't going to give a reckless disregard of facts type of situation.

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If I change my mind, I will let you know, but I don't -- I can't conceive now, and the charge is only in the first draft, the normal usual type of reckless disregard of facts.

Now, there can be an argument made by the government that all this material existed and if they didn't read it, well, somebody who wants to go in and develop a hundred thousand acres of land certainly should have read the available reports in Albuquerque by reputable people, all of that is in the record. The government will argue from that, this is what they read or must have read and this is what it says.

You are, I assume, going to come back and use the same documents and give a different page the way you can in the United States Supreme Court decisions on patent cases. You take page 390 and they take page 391.

This is, I assume, what the argument will be to this jury and they will decide whether this was an honest opinion or not.

MR. FLEMING: We just did not want our submission of a proposed instruction dealing with the conscious disregard concept to constitute a waiver of our objection --

THE COURT: I don't know of any facts in the case. I will hear Ms. Hynes Monday.

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MR. FLEMING: These people upstairs, your Honor, you can't turn a circle unless they tell you you have waived something. We submitted a request, but we object to a reckless disregard charge. The request is there only in case your Honor commits error and gives that instruction and that's for the Court of Appeals.

MR. KAUFMAN: In connection with whatever instruction your Honor is going to give, we just ask your Honor not to use the word "reckless." The Court of Appeals just recently in the Hanlan case, I think a week or two ago --

THE COURT: Mr. Kaufman, don't you know that that opinion has been recalled by the Court of Appeals and doesn't exist?

MR. KAUFMAN: No, I don't, your Honor.

THE COURT: Don't rely on it. It has been recalled.

MR. KAUFMAN: There are cases in the last half of 1976 that suggest that the word "reckless" shouldn't be used, but "deliberate" should be used. That's all I am saying.

MR. FLEMING: Judge, are you pulling my leg?

THE COURT: No.

MR. FLEMING: It has been recalled?

THE COURT: Yes.

MR. FLEMING: That's the Tidal Marine case? That's the case I argued the day you selected the jury, if your Honor please, on the question of recklessness.

THE COURT: I don't recall.

MR. SPRIZZO: The statement of facts is erroneous.

MR. FLEMING: Better recalled than reaffirmed.

THE COURT: Now I should tell you how I know. Since the government referred to Hanlan, I sent my law clerk to get it for me to read because I am not up to January 6th or 7th with reading slip opinions. I went through Christmas and I quit.

MR. FLEMING: That helps us, your Honor.

THE COURT: The New Year's spirit hasn't fallen upon me, but, in any event, if you go to the Court of Appeals, they will tell you it has been recalled.

MR. FLEMING: Great, because we were trying to figure out how we could argue in this case --

THE COURT: If they recalled it, the mandate doesn't come down, does it? Doesn't your time for rehearing start from the time of the mandate?

MR. ARKIN: The time of the issue answer of the mandate.

THE COURT: I gather if a mandate was issued, that was recalled, too.

MR. ARKIN: Your Honor, may I have a few moments of your time?

THE COURT: Yes.

MR. ARKIN: First, with respect to our request number 5, which had to do with the defendant's right not to testify, Mr. Fleming and I agree that the second paragraph of that request should be withdrawn. We would like the first paragraph. Your Honor denied it except as charged.

THE COURT: I give a two-line standard charge on that.

MR. ARKIN: I just wanted to make sure of that, your Honor.

I have already discussed with your Honor, but may we comment just a bit upon some of the arguments which appear in the government's requests because your Honor said that you are going to marshal in your own way, which I understand, and, yet, on the marshaling, which appears in the government's requests, we have some substantial concern.

THE COURT: I will not discuss it. I will marshal the evidence as I think it exists.

MR. ARKIN: Excuse me, your Honor?

THE COURT: I will marshal the evidence as I see it exists to the extent that I think I have to do it to fairly present the contentions.

It will not be detailed. The detail will come from your mouths when you address the jury.

MR. ARKIN: The only reason I bring it up now is in terms of what Ms. Hynes may argue on Monday, I am loathe to interrupt even an adversary in the course of his or her summation, I am loathe to do it, but I thought we might discuss a couple of the points which appeared to be argumentative.

THE COURT: You discuss it with her and tell her you are going to object to it now if you wish.

MR. ARKIN: All right.

THE COURT: But normally I just say the jury's recollection will govern.

MR. ARKIN: A couple of other brief points which are, one, I mentioned this a little earlier, but I now make a specific request that your Honor at some point charge the jury that the statement which appears in I believe it is Exhibits 384 and 388, to wit, most of the new growth activity is on the west side, is not a representation within the scheme charged. It is not a representation within the indictment or in the bill of particulars, which

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amplifies the indictment.

In other words, even if the jury were to find that that was a false statement or a false opinion or a dishonest opinion, it is not within the scheme charged.

THE COURT: Ms. Hynes.

MS. HYNES: Your Honor, that statement and any argument or proof that the jury might consider with respect to that statement could be considered on the issue of the fraudulent intent of thedefendants with respect to statements made in promotional literature.

It is not itemized --

THE COURT: I gather Mr. Arkin's position is that you didn't tell him in your bill of particulars you were going to rely on that.

MS. HYNES: Your Honor, it is not itemized in the indictment. It is certainly referred to in the bill of particulars.

THE COURT: You show it to Mr. Arkin.

MS. HYNES: Your Honor, there are some minor points to bring up at this point.

MR. FLEMING: We, of course, have an exception to your failure to instruct as we have requested.

THE COURT: Yes.

MR. ARKIN: Your Honor, just one more thing so I can get it clear in my own mind.

May I argue the following, which is that no literature was used unless submitted and permission to use was granted by the agency, not speaking about approval. Is that clear, your Honor?

THE COURT: I have no objection to your arguing that.

MR. ARKIN: Thank you.

MS. HYNES: I don't think there is any basis for that in the record.

THE COURT: That's what Mr. Perlmutter, I think, testified to.

MS. HYNES: No, he said it was submitted or filed, there is an NYA number on it.

THE COURT: The number I gather, was a number that was given by the agency after they read it. He said that indicated approval.

That's where Mr. Arkin got his approval language in.

MS. HYNES: I understand and I think that's trying to come in through the back door that permission is equated with approval and your Honor's statement that your Honor would charge that's not approval.

THE COURT: Let's see what he says, but it is true that from the stand we have been told that they did not use anything certainly from New York State that did not have the number on it which showed they complied with the law.

MR. ARKIN: And were permitted to use it.

THE COURT: And permitted to use it.

MS. HYNES: Your Honor, that's just --

THE COURT: That's true, isn't it, Ms. Hynes?

MS. HYNES: They had to file --

THE COURT: You haven't any proof that they used any material that was not approved by the state agency?

MS. HYNES: Your Honor, there are some exhibits in this case that don't have an NYA number on them, promotional material, right now.

THE COURT: I don't know of any.

MS. HYNES: Well, there are.

THE COURT: All I know is that Perlmutter testified they only used material that had the number on it.

MS. HYNES: He was there from 1969 --

THE COURT: I don't care when he was there. That's the evidence that's in the record.

MS. HYNES: Your Honor, the issue that has come up before with respect to the property report and the certification of material from the Department of Housing and Urban Development with respect to a statement on a property report, we have the certification and I have shown it to Mr. Arkin. I don't believe it has to be in the record. The only point of getting the certification was to prove to Mr. Arkin that the writing on that property report was not done until sometime at least in 1974 even though the effective date of the property report, which was October of '72, was able to remain in effect and we have two exhibits in evidence.

One is the October, 1972 property report without the writing over it and the second is the October property report with the writing over it.

I have these certified copies of correspondence available and I have shown them to Mr. Arkin. One is date stamped October 16, 1974. It is a letter from AMREP to the Department of Housing and Urban Development and it refers to the title page and states that they will put the overlay language over that title page and it is the October 16, 1972 property report.

I bring that up so that there will not be any reference in the record and in front of the jury or argument to the jury that that was actually in effect in October of 1972. It was not.

MR. ARKIN: I don't really understand Ms. Hynes' point, but I assure your Honor there will be no problem.

THE COURT: I now have four files that Ms. Dacey submitted to the court on January 12th, two days ago, which contain documents which had been submitted to other judges on the question of privilege and which those judges had ruled to be privileged insofar as the grand jury testimony was concerned.

I have reviewed all the documents in the four files and I will list them for the record.

Judge Weinfeld doesn't have a date on it.

Judge Bonsal, January 20, 1975, is the second folder.

The third folder is Judge Bonsal, January 20, 1975.

The fourth folder is Judge Bonsal, January 27, 1975.

None of these documents are available to the government. They are privileged.

MS. HYNES: Your Honor, there is one final thing. In addition to the requests to charge submitted by the defendant and by the government, is your Honor going to give any additional requests to charge?

THE COURT: Am I going to give any? What do you mean?

MS. HYNES: Other than ones that have been requested.

THE COURT: Obviously. You didn't cover the whole charge. You gave me what you thought I should charge the jury and I have ruled on them.

MR. LAVINSKY: If your Honor please, may I simply state for the record that the corporate defendants join in the requests made and the objections taken by Messrs. Fleming and Arkin concerning the charge to the jury? That is the procedure we have followed throughout the trial and it would certainly expedite matters to do it that way.

THE COURT: The record will so note and I make the same ruling on your requests to charge as I have on Mr. Arkin's.

MR. LAVINSKY: Thank you, your Honor.

MR. ARKIN: Your Honor, may I bother you just for one moment. I know it is late for all of us. There is one exhibit in the record which appears to be a script of "Your Golden Future" on which no evidence was ever used. It was admitted, I believe, on the Solomon Friend issue. It had his handwriting and I know that has been redacted. There is no showing it was ever used at all and "Your Golden Future" is in evidence and the script relating to "Your Golden Future" is in evidence.

THE COURT: Ms. Hynes?

MS. HYNES: Your Honor, this is the point we argued the last time we met and your Honor overruled the objection. The script that Mr. Arkin is referring to has quotations which are set forth in the indictment. We have agreed that we will substitute a clean copy, not the one that Mr. Friend had his handwriting on. Your Honor agreed as to that and it was ruled on at the last session that the court met.

MR. ARKIN: You can substitute the one actually used. My concern is we have a script which was never used. We have testimony from the film that "Your Golden Future" was the same as used pretty much throughout and we have a script that follows that precisely. May we not substitute the actual script for the one on which no evidence was ever used. That's all I am saying.

MS. HYNES: Your Honor, the evidence is that there was a film that was shown. The witnesses who took the stand said that as far as they knew this was substantially the film that was shown and this was the issue that your Honor addressed yourself to several times.

The script that was introduced through Mr. Friend's testimony had certain handwriting changes on it. The government's position is that the changes that were made were

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made sometime in 1972 and the changes are not substantial.

However --

THE COURT: Mr. Arkin is saying that there is a clean script of the changed version of the film which can be used, but this one that you had for Friend does not tie up with any film that was used. That is his point.

MS. HYNES: It does tie up with a film that was used. People have testified about the film "Your Golden Future" and this is the script for the film "Your Golden Future" up until 1972.

Then there were some --

THE COURT: The one that Friend had was the existing script to 1972?

MS. HYNES: Your Honor, until the time that it was changed in 1972, that is the script.

THE COURT: He keeps shaking his head no.

MR. ARKIN: There is no evidence of that. There is just no evidence of that. The evidence in this case is that "Your Golden Future" was shown. The witnesses time and time again got on the stand and they said, this is the picture we saw or we think we saw or we think was used depending upon whether they were employees or former employees or customers.

This script which I hold in my hand was premarked,

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is the script of the actual picture which was shown to the jury.

THE COURT: Was there ever a second version of that picture made?

MR. ARKIN: There is no evidence of that, your Honor. To my knowledge there may have been, but there is no evidence of that.

THE COURT: Wait a second. We cut out putting on film after film to avoid that.

MR. ARKIN: They did that.

THE COURT: That was at my direction. I said we will take one of them. On the representation that the general tenor was maintained, we will assume it was the same.

MR. ARKIN: I have never seen any other "Your Golden Future," I have never seen it. I don't know if it exists. There may have been, I just don't know.

THE COURT: Is there one, Ms. Hynes?

MS. HYNES: Your Honor, the "Your Golden Future" that we received, the film, was the one that was the redacted version because they said they cut and spliced everything.

Now, the original script before that revision in 1972 has the NYA number on it. It was the one that was in use and then it was later changed. I don't see any problem with it.

THE COURT: He says he knows of one film. He doesn't know of two different versions. That's his point.

MS. HYNES: There is one film, but there were past versions.

The representation that was made to me in the grand jury when I asked for the old version was that all of the old versions were cut and spliced and they only had this most recent version, but the fact is that there were other versions of that film.

THE COURT: Is the version that Mr. Arkin has the most recent version or what you claim was of a prior version?

MS. HYNES: The script that --

THE COURT: That Mr. Arkin is now talking about.

MR. ARKIN: I have the script of the picture which was shown to the jury.

MS. HYNES: That would be then the most recent version as opposed to the previous version.

THE COURT: What would you call the most recent version, what date?

MS. HYNES: Sometime in 1972. I believe it was after July of 1972.

MR. FLEMING: This really disturbs me. I remember this very clearly. When they offered that film, Mr. Glendon, who at that time was in the case for Mr. Friend and who argued very vociferously about this, and the government represented that the film was the same.

I think if your Honor checks the records you will see that representation. It goes back to the beginning of this trial when they made representations that the scripts should come in because all the scripts were all the same. It turned out they were not all the same.

I think if your Honor will read that testimony right at the beginning of the trial at a side bar conference, which I recall very clearly, Mr. Glendon was arguing very strongly in Mr. Friend's behalf about this.

THE COURT: I will be here all day tomorrow and you can call my chambers and tell me what I am supposed to read. Tell Ms. Hynes what you are referring to and Ms. Hynes can tell me what I am supposed to look at.

MR. ARKIN: I can give your Honor the script right now.

THE COURT: I don't want the script. It depends on what the record shows.

MS. HYNES: Your Honor, the side bar conference was your Honor's comment --

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THE COURT: Ms. Hynes, I told you what I want tomorrow morning. Stop arguing now. It is 5:00. Let my chambers know. I will be here all day tomorrow and you tell me what you want me to look at after you hear from Mr. Fleming after he tells me what I should look at. When I do that, then I am in a better position to rule.

(Adjourned to Monday, January 17, 1977, at 10:00 a.m.)

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

January 17, 1977
10:00 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning.

I have the supplemental requests to charge that were submitted by the government.

That is denied.

The supplemental requests submitted by the defendants, Request No. 14-A is denied except as charged.

Request No. 24-A is denied. You can argue that to the jury.

Request No. 26 is denied.

I have a letter I received Saturday from Mr. Arkin regarding Exhibit No. 341, which I understand Mr. Arkin wishes stricken. That motion is denied.

The government, I gather, has a clean copy of it, though, without Mr. Friend's handwriting on it.

MS. HYNES: Yes, your Honor.

THE COURT: Is there anything else open

before we call the jury back?

MR. KAUFMAN: Yes, your Honor. On the defense Request No. 6 that we discussed on Friday, that is the request that contained some of the language of the two inference rule and your Honor ruling on Request No. 6 denied it except as charged.

We would specifically inquire as to whether or not your Honor will be charging the two inference rule.

THE COURT: I do not charge the two inference rule.

MR. KAUFMAN: Thank you.

THE COURT: Anything else?

Call the jury in.

(Jury present)

THE COURT: You may proceed.

MS. HYNES: Thank you, your Honor.

Judge Metzner, defense counsel, Mr. Foreman and ladies and gentlemen of the jury:

We have been on trial now for about ten weeks. The first thing I want to do is to thank you very much for the attention that you have given to the witnesses and to the evidence as it comes in.

The other thing that I want to tell you is that anything I say to you is not evidence. The evidence in this case is the evidence that came in through the witnesses who took the stand and through the documents that were offered and received in evidence and any stipulations. That is what you have to decide this case on is the evidence, not what I say.

I will explain what I believe the government has proved through the evidence that we have offered through the testimony of the witnesses, through the cross examination and through the documents, but anything that I say is not evidence, anything that the defense counsel says is not evidence. Even anything that Judge Metzner says is not evidence. The evidence is from the witnesses and the documents.

You are to decide this case based upon that evidence and what you believe to be the reasonable inferences that could be drawn from the evidence that has been presented to you.

This case has involved the testimony of witnesses. Witnesses who appeared and who purchased land. When I spoke to you in the beginning of this case I told you that this case was about people who bought land at Rio Rancho as a financial investment because that is how the land at Rio Rancho was sold.

It was sold as a safe and secure financial investment and that is what this case is about. It is about the people who bought that land as a safe and secure financial investment which could be resold at a profit. This case is about the representations that were made to people to induce them to sign contracts, to induce them to buy the land.

You should weigh the evidence. You should weigh the representations that were made to these people that convinced them that they should buy this land; that convinced them that this land was a good investment, and convinced them that they could make money as a result of purchasing this land.

Now, the first thing I want to deal with is what was said to these people in order to get them to buy land.

You have heard people testify that they went to sales dinners. Other people bought in their homes, but basically the majority of people bought at sales dinners. The sales dinners began in about 1965 and people were invited to these dinners. You heard that there were speaker's presentations. There was a film shown and there were salesmen present there to sell the land.

We have in this case a very important piece of evidence and that is a tape, a tape of the training sessions of salesmen.

Now, as jurors, you listen to the evidence, you weigh the evidence, you listen to the testimony of the various witnesses and if it varies one way or another you have to weigh it because you weren't there. These witnesses were there. But in this case we are very fortunate, we have a tape of the training session. That puts you there.

There is no dispute about what is on that tape. You have heard the tape. It is the tape of Sid Hollander training sales people on how to sell this land. There is no dispute about what was said at that training session.

There is no dispute as to how Sid Hollander was training sales people to sell Rio Rancho land.

I urge you throughout to keep in mind that that kind of evidence is terribly probative of what really went on in this case and what these defendants really intended in the sale of their land.

If you listen to that tape, and I urge you to listen to it, you have every right to ask for any exhibit in evidence. You can listen to the tape and you

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can follow along with the transcript as an aid, any exhibit that has come into evidence you can ask to see. Any testimony that you want read back you can ask to have read back,but that tape really sets the stage as to what was going on here because that tape sets forth very clearly what this whole program was about.

They were selling land to people on the basis that they could make a lot of money. That was what was represented to people.

You should buy this land because you can make a lot of money. This was an investment program. It was offered as an investment program.

You heard people take the stand and testify that they went to these dinners, that they were told that an investment in Rio Rancho land was better than putting their money in the bank. It was better than investing their money in stocks because stocks were risky. The land at Rio Rancho was not a risky investment. It was a safe investmenti It was a sure investment.

They made comparisons about what kind of money you could expect to get from an investment in Rio Rancho land, 25 per cent a year.

MR. FLEMING: Object to that.

THE COURT: Overruled.

MS. HYNES: The testimony in this case is very consistent. There were comparisons between the rates of return on investments and the rate of return on an investment in land was 25 per cent and they showed you examples of this.

Let me refer to the tape of Mr. Hollander. Mr. Hollander in training and in motivating, you will remember that Mr. Mandel, who was the vice president of sales, said that when sales fell off in an office, they sent out someone to motivate the sales office.

Mr. Hollander was the person that they sent out to motivate this sales office and this is the tape of the presentation that he made to that sales office in order to motivate them.

He states: You are trying to get money out of their pockets and how you do that is that you create enthusiasm and if you don't create enthusiasm, the plan is not going to work. They have an organized plan that they are going to present, that you follow that plan and if you follow that plan it will work.

The incentive, making a lot of money.

You remember that he then had all the salesmen jump up on their feet and say, tell me what you are selling this land, tell me what you are going to tell these people that they are buying this land and the salesmen were saying because I can make a lot of money, because I can make a lot of money and that's how people were sold this land, on the basis they could make a lot of money.

Plus it was a guaranteed program. We have in evidence and you don't have to guess about what was said to these people the scripts of the speakers' presentations. Those scripts, for example, 316, Exhibit 316 at page 10, says: The word investment incidentally brings me to the main reason for being here because what we are presenting tonight, ladies and gentlemen, is a land investment program.

Then on the tape thatyou heard of the actual dinner party, this was the dinner party up in Syracuse, the BTG dinner party, that tape states: It's not important that you live there or retire there or even that you visit there. The only thing that's important is that you want to make money.

Then the tape goes on to say, and this is Mr. Hollander carrying on that sales dinner: Does anyone here have any aversion to making money?

Then again the script at 316, but whether you prefer to live there or investment in its future, you can make a great deal of money and that's what we are going to talk about here this evening, making a great deal of money because I am assuming everyone wants to make money.

Now, this was presented as a guaranteed and protected program and I am reading from a script, 317, page 25:

You pick the amount that you are going to force yourself, you are going to discipline yourself to put away every month to work for yourself in as guaranteed and protected a program as you will ever find anywhere.

This land was sold as a safe and secure investment that was going to yield a profitable return.

The defendants represented that they were dealing with facts. You are going to hear argument that this was mere opinion, but it is contradicted by the evidence in this case because again the script, 317 at page 5: And facts, ladies and gentlemen, are all we are going to deal with here this evening.

Now, what was the basic theme of the advertising? Mr. Hollander also stated in his presentation to the sales force: If you think these people listen to every word and understand every word and remember every word, you are crazy. They don't.

That's probably true. There was a basic theme, there was a basic representation of a theme that they wanted you to remember and you heard that theme from the witness stand over and over and over again. It was like a broken record.

Albuquerque was bounded on three sides. Albuquerque was bursting at the seams. Albuquerque could only grow to and through Rio Rancho. That was the advertising theme that this company sold this land on.

That Albuquerque was bursting at the seams and could only grow to and through Rio Rancho and because of that this was your opportunity to make money because there is going to be a demand for this land, because this was a growth area and they kept stressing growth, bursting at the seams and that the only direction that the city could grow was to and through Rio Rancho.

The government contends that those statements were false and misleading. That we have proved that they were falsa and misleading and that they were the material inducements to get people to buy this land; that those statements were false and misleading in 1966 when they were first made, in 1965 when they were first made and they are false and misleading today. They are still not true.

Now, the proof of that has come from not only the government's witnesses, but it has come from defendants' witnesses.

(Continued on next page.)

You will recall that Mr. Carruthers, who was the city planner of Albuquerque, testified that the only direction that Albuquerque could grow was not to the northwest nor was it to and through Rio Rancho.

In fact, there was ample room in Albuquerque to grow in many directions.

That was Mr. Carruthers. He was the city planner.

Mr. Pierce, who was the executive director of the Council of Governments, someone who has no axe to grind in this case, he appeared and he also said that the statement that the only direction that Albuquerque can grow is to the northwest was not a correct statement. It was not a correct statement in 1966. Let me read from his testimony.

The transcript on page 4221. Let me just correct it. It is 1965.

"Q In 1965, would it have been a reasonable statement to make that the only direction the city of Albuquerque could grow was to the northwest?

"A No, sir.

"Q Would it have been a reasonablestatement that the only direction the urban area of Albuquerque could grow would be to the northwest?

"A No, sir."

You will remember that the urban area is within Bernalillo County.

"Q Would it have been a reasonable statement to make that the only area of the urbanizing area of Albuquerque could grow would be to the northwest, the only direction?

"A The only direction within the urbanizing area? No, sir."

And that was the area that included even beyond the Bernalillo County line.

Mr. Pierce appeared under subpoena, Mr. Carruthers appeared under subpoena. They are officials. Mr. Carruthers is the planning director. These individuals clearly and unequivocally stated that those representations by the defendants which were made to get people to buy this land as a good financial investment were not true.

And, indeed, you recall Mr. Musgrove. Mr. Musgrove was the person from the telephone company. He was asked to appear in a film for Rio Rancho and he was asked to make certain statements in the film, and his testimony is as follows. This is at page 4961.

"Q Mr. Musgrove, when you arrived at the switching entity to make this film, was there anything else contained in the script that the Rio Rancho representatives wanted you to read?

"A Yes.

"Q What else was in the script?

"A Because Albuquerque was hemmed in on three sides, the only way it could grow was west.

"I objected to that, because that was not factual."

Then he goes on at line 12:

"A Well, you actually could have put -- and I pointed out to them -- another Albuquerque in those blank areas that had not developed yet, so when you said that it could only go in one direction, this was not right.

"We felt that it could grow west. The thing that really had held the west area down was access across the river, and plans were in the mill by the city and the state to improve this access, which they have done, and at which point the west side would grow.

"But that was really all I could say."

Ladies and gentlemen, this land was sold to people in New York, it was sold to people in Milwaukee, it was sold to people in the state of Washington, it was sold to people who lived outside of New Mexico who did not know the Albuquerque area, who were not familiar with the Albuquerque area and who were relying upon the statements made by this company and by these defendants as to why they should put their hard-earned money into this land as opposed to putting it into a savings bank, as opposed to putting it in the stock market, or as opposed to putting it in nothing and just holding onto it.

But this company and these defendants said to them, "Put it in our land. It's a guaranteed program, because the only direction that Albuquerque can grow is to and through Rio R'ncho."

Now, you remember Darlene McCorkle's testimony. Darlene McCorkle said the main theme was you could only have this little funnel area up to Rio Rancho. That was the only way the growth could go.

And this is what they were leading people to believe, that their land was going to have a market, that they would be able to resell that land.

This map was a piece of promotional material that was used by this company from 1966 forward. You will see that the arrow stops right at Rio Rancho; it's next. And the scripts bear that out, because what Rio Rancho was doing was saying, "One, Albuquerque is bursting at the seams; two, it's only got one direction to grow, through Rio Rancho."

And let me again refer to the evidence in this case.

This is a script, 315, on page 11.

"The city is now ready to come into Rio Rancho Estates."

315 was a script that was used in 1965.

"The city is now ready to come into Rio Rancho Estates. Now we are ready for Albuquerque. Albuquerque is ready to fall right into Rio Rancho."

The scripts goes on to talk about the kind of money that you can make on an investment in land and they are talking about the percentages, and it goes on to say, "Using the leverage principle" -- and you heard the witnesses testify as to how they were told that if they invested in land it would have the leverage principle and they could make a great deal of money -- "using the leverage principle, $25 monthly immediately controls an acre of land selling today for $1895. Now with the property worth $1895, it will appreciate 25 per cent in one year."

They are talking about Rio Rancho land appreciating 25 per cent in one year. It gains $475 in value.

There is no question in this case that when they are talking about 25 per cent appreciation a year, they are talking about Rio Rancho land. That script says 25 per cent a year.

The script goes on to say -- and this is 315 and it is used in 1965 -- "Your investment has resale value, because I tell you right now, 18 months from today you will not be able to buy it for less because we will have sold it all out. People like yourselves will be in the resale market."

Now, what are they talking about?

They are talking about somebody who can make 25 per cent a year, they are saying that the investment has resale value and in 18 months -- and this is in 1965 and 1966 -- in 18 months they will be able to resell it.

Now, the 25 per cent a year, again, let me go back to the Sid Hollander tape of training the sales people.

Sid Hollander says to his sales people, trying to get his customers to buy, "Say to them, do you want a short term investment, do you want a medium term investment, or do you want a long term investment?" The idea being if you hold the land for only a little while you won't make so much, if you hold it for a medium amount of time you will make a little bit more and if you hold it for a long time you will make a real bundle.

But the clear implication is, you are going to be able to make 25 per cent a year, and if you want to sell it you can sell it because this is where Albuquerque is growing, there is going to be a demand for it and you are not going to be stuck with it; you are going to have a resale market and you are going to make more money than if you invested in the other kinds of investments that they set forth, the banks, the savings accounts, the stock market.

Now, the promotional material "This is My Land" gave specific examples of the rate of return on investments in and around the Albuquerque area.

Now, why did they use those examples?

It's very clear. They used those examples to have people believe that that's what they could make on Rio Rancho land. Why else would they use it? Why else, at every sales dinner, is the speaker in the front of the room referring to pages 7, 8 and 9 of "This is My Land"?

As a matter of fact, in the speaker's script, 314, it refers to "This is My Land" and specifically states, "These are examples of sales and resales in the Albuquerque area."

The answer is very clear:

They want you to believe that this is what you can expect if you bought land at Rio Rancho.

And these examples cover different time periods and they give the rate of return per year, per year.

Now, these defendants are going to argue to you, as they did in their opening statements, well, these are mere matters of opinion, we weren't giving any time period.

The whole thrust of the sales presentation was that this was a liquid investment, that you could resell it, that there would be a demand for it, that you could expect a higher rate of return, that it was safe, that it was a guaranteed investment program and that you weren't running any risk the way you might if you invested in stock.

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And the examples that they gave in "This is My Land," which is prefaced by statements saying, "One of the surest and safest ways to make handsome returns on your investment, the facts are self-evident," and then they give you the examples.

And the examples cover, for example, a sale in one year with a percent of profit of 122 percent, a sale in five years with a percent of profit of 79 percent, percent of profit of eight years.

It is very clear what these defendants are saying; buy the land. If you want to hold on to it for two years, three years, five years, ten years, it does not make a difference; the only thing that makes a difference is how much money you eventually want to make. If you hold on to it longer you will make more money, if you don't hold on to it longer you won't make so much. But this was supposed to be a liquid investment, a demand for it, the only way that Albuquerque could grow.

Now, what is very interesting about how the defendants sold this land and what is very important for you to focus on in determining whether these defendants intentionally misled customers is the following:

These defendants, first of all, misrepresented that the only place that Albuquerque could grow was to and through Rio Rancho. That is absolutely false and it has been uncontradicted in this trial. No one has taken that stand and said that the only place that Albuquerque can grow is to and through Rio Rancho.

And the government's contention in this case is that there was sufficient land in and closer to the city of Albuquerque to take care of that growth without ever reaching Rio Rancho.

The government concedes and, indeed, it is the government who is saying that the growth can go to the northwest quadrant of Bernalillo County and that the growth will go to the northwest quadrant of Bernalillo County.

We are not saying that there is no growth that can take place in the northwest quadrant of Bernalillo County. Quite to the contrary. We are saying that that is an area where growth can take place. And the defendants never revealed that to their customers.

Instead, the defendants led their customers to believe that the only direction of growth was northwest, which meant Rio Rancho. But northwest Bernalillo County, which we all know by now has a great deal of land in it and there is plenty of land in the northwest section of Bernalillo County for the growth of Albuquerque and it need not only grow to and through Rio Rancho.

When people were told that that was the only way that it could grow, it was a false and misleading statement to get them to buy that land. And that is why people bought that land. That is why people thought that this was such a good financial investment.

The defendants' sales scripts state that the city of Albuquerque is bursting at the seams.

Now, even there, even Mr. Yguado had to say that he couldn't accept that without some qualification.

Albuquerque was not bursting at the seams in 1965, in 1966, and it is not bursting at the seams today. There is plenty of land in and around Albuquerque for Albuquerque to grow, both in the city and immediately adjacent to the city.

The city of Albuquerque is not dependent upon its future growth on Rio Rancho. It was not dependent on its future growth on Rio Rancho in 1966. And this was really the basis of why this land was sold as a financial investment, because that's the only place that the city could grow, and that simply is false, it's simply false.

And what these defendants did was, they said in their scripts the city of Albuquerque is pushing out and it has reached as far as Paradise Hills and we are next, we are next. The city limits have pushed out this far and here we are, Rio Rancho is next.

Now, remember, you have seen sales films and there is a film of the West Side Story and then there is a second film of the West Side Story, the original of the West Side Story.

Now, when you take into consideration whether these defendants were misleading their customers, consider the following:

The orignal version of the West Side Story had reference to Volcano Cliffs, had reference to College Heights.

What these defendants did is that they edited out that part of the West Side Story. They edited out those shots that came in on Volcano Cliffs. And you can ask to see that film again and look at it closely, with the master plan for 10,000 families. That was edited out for the film that was shown at the sales dinners.

College Heights was edited out. It was not shown at the sales dinners.

Westgate Heights was edited out and not shown at sales dinners.

And that's what these defendants intended to do; not to let people know that there is other land on the west side of Albuquerque that would take the growth of Albuquerque that was closer to Albuquerque and that would grow and take that population growth before it would ever reach Rio Rancho.

Well, if these defendants didn't intend to mislead, why did they edit out that land, those subdivisions?

There isn't any answer to that. The only answer is that they wanted to intentionally mislead these people to believe that the only place the growth could go was to Rio Rancho. They portrayed this as a film by the West Side Association that another organization was behind it, they edited out, and then, not only do they edit it, but introducing it in the speaker's script in 314, they are introducing this film and then they say, "You will note that the dominating factor is Rio Rancho Estates."

They made Rio Rancho Estates the dominating factor. The West Side Story, the original version, had five subdivisions in it, and each subdivision was shown. Rio Rancho was shown and Rio Rancho had a role in making that film.

But these defendants edited out the other subdivisions, with the exception of Paradise Hills. Why? Because that fit in, because it fit in with their speaker's presentation, because the speaker's presentation was, The City has pushed out as far as Paradise Hills and we are next."

So in the West Side Story they left in Paradise Hills to say, "Okay, we are out this far and now Rio Rancho is next."

So when these defendants try to put witnesses on this stand to say, "Yes, the growth has to go to the west side of Albuquerque," sure the growth has to go to the west side of Albuquerque, but that is not what we are talking about.

They were saying the growth of Albuquerque had to go to Rio Rancho, because they were equating the west side, the northwest portion of Albuquerque with Rio Rancho; it was one and the same.

You didn't hear any mention in their sales film about Volcano Cliffs, did you? You only heard it from this witness stand. You only heard it at this trial. But people who were sitting at these dinners didn't know about Volcano Cliffs.

You know the other interesting thing is, Mr. Yguado, their witness, Mr. Yguado comes in and he testifies that he invested in College Heights and he made money in College Heights.

College Heights happens to be one of the subdivisions that they edited out of the West Side Story.

Then Mr. Graham comes in, and Mr. Graham says that his bank has invested in Taylor Ranch, which is right next to College Heights.

Well, that was another area of that film that was edited out by Rio Rancho.

Sure Taylor Rancho is on the west side, sure there is a subdivision over there. They have an eight to ten year plan that they have just started now.

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

MS. HYNES: Which is a plan for 5,000 homes.

People sitting at those sales dinners didn't know about that land. They weren't told that there is plenty of land on the west side closer in to Albuquerque for these subdivisions to grow and for the city to develop. They bought this land believing that it had to go to Rio Rancho, and that was why they bought it.

Ladies and gentlemen, it is very clear that these defendants intended to mislead purchasers into believing that the only reason that they should be buying this land was that the growth of Albuquerque had to be to and through Rio Rancho.

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The evidence in this case has been overwhelming that that has not taken place. It has not taken place in fifteen years.

Do you remember Mr. Kearney? He was the fire chief at Rio Rancho.

Mr. Kearney testified that he has been keeping records since 1967 and that 50 families, he estimates, 50 families moved from Bernalillo County up to Rio Rancho.

You have heard throughout the course of this trial evidence that the city of Albuquerque has grown. It has grown in fifteen years, and that growth has been -- the majority of it has been to the northeast.

Every witness who got on that stand had to say that and did say it.

Mr. Carruthers said the growth was to the northeast, and that was what was predicted and that is what happened.

Mr. Pierce said that the growth was to the northeast. Mr. Seay, from the telephone company, said that the growth was to the northeast. Mr. Musgrove from the telephone company said the growth was to the northeast. Mr. Neiswander, from the FHA, said that the growth was to the northeast.

In fact, Mr. Graham admitted that the growth of Albuquerque had been to the northeast. And, in fact, Mr. Graham and his bank had been investing with the Bellamah Corporation in the northeast, and that the first time that they invested in the west side was recently, in the last year or two, with the Taylor Ranch. But prior to that, Bellamah Corporation had been in the northeast.

The point here is that the growth of Albuquerque was to the northeast. It was entirely in the opposite direction that these defendants were representing to customers.

Customers who knew nothing about Albuquerque, customers who were relying upon these defendants, who believed they could rely upon these defendants.

They were wrong to rely upon these defendants because they were told lies, because Albuquerque was not growing through Rio Rancho. Albuquerque was growing to the northeast and that has been the uncontradicted proof in this case.

Let me talk a moment about how this land was sold. You heard testimony about people going to these sales dinners and what was necessary to make the sale.

Sid Hollander in his sales training session put it very well:

We have a planned format. We have a program, an idea, a concept, a concept that has produced millions of dollars worth of business and the salesmen's job was to close.

That was the only job that the salesman had. They were trained how they could close.

Remember Mr. Hollander said, what you do is first you create the enthusiasm. Certainly that was the company policy.

The salesmen were trained to create enthusiasm, trained to applaude. You listen to that Hollander tape, it is all there; it is all there. The enthusiasm, applaude, call out the hold, the sense of urgency.

This wasn't only coming from the training sessions, this was coming from the front office. This was coming from the corporate officers of AMREP.

Mr. Perlmutter testified that with respect to getting people to attend the sales dinners that they were boosting, that was the term that they were using, and they wanted to get a lot of people there. Why? Because you needed a certain amount of mass psychology. You needed a certain amount of people in attendance in order to create that mass psychology. That is what Mr. Perlmutter testified with respect to a conversation with Mr. Dan Friedman when he was asked:

"Q You testified about the practice of boosting to get attendance up at dinner parties. With respect to attendance at dinner parties, were you ever advised by Dan Friedman that you needed a certain amount of mass psychology in order to sell properly?

"A I heard that term, yes.

"Q Do you recall approximately when you were advised?

"A In one of our offices we werent' getting enough attendance on the amount of people that had been set up at a reception and in discussing the attendance, to get it up, what we would need, which was two units for each sales person, this term came out in that regard."

That is Mr. Dan Friedman.

We also have Mr. Dan Friedman writing in June of 1972 to the Sunshine Properties, this is in Milwaukee, Wisconsin. Mr. Friedman attended a dinner party there and these are his comments.

I noted that a few of your salesmen were using maps at the closing tables. I do not recommend this procedure as our previous results indicate we are not therefore able to create the urgency that is necessary to make the sale.

The urgency that is necessary to make the sale.

He goes on:

Your salesmen generally do not TO quickly enough. That is a takeover. I noted that by the time a TO took place it generally was an after-the-fact situation and much too late. Please work with your sales people in creating a little more activity, enthusiasm, noise, especially when the holds are called. I feel this came off like a lead balloon.

Ladies and gentlemen, in order to sell this land these defendants had to run these sales dinners, had to create this urgency, had to have people jumping up and calling holds and that is what went on.

In the front office Dan Friedman, the vice-president of sales, is writing to them saying, you didn't have enough urgency. You didn't have enough enthusiasm. You didn't have enough excitement and noise when you are calling these holds.

Why? Because they want people to believe that this property is really being sold like hotcakes. Why else do they need the urgency? Why else do they need these types of sales techniques in order to move this kind of property?

It is very clear why they need it because without it they wouldn't be able to sell it. That is the way they sold it. It is the only way they succeeded in selling it.

Now, you heard testimony about high pressure sales techniques. You heard testimony by Darlene

McCorkle about the high pressure sales techniques.

Now, these people were very expert at what they did. There was a whole training session and program that they had to train people in this. The takeover. The time was of the essence. They have manuals, the OPC manual talks about it, time being of the essence.

That you only have ten minutes to start coming in and making that close and if you don't make that close in ten minutesyou should have a takeover. Have your manager or another sales person come in and he will start working on the person.

Now, that is what was going on at these sales dinners. This is what was set out in their manual. 752-A, Rio Rancho Estates OPC training manual, page 13:

Time is of the essence at a party. You cannot spend all night on one customer so if you haven't moved into an effective close within ten minutes or so, get somebody to TO for you. Your speaker, your manager, another sales person.

Then they talk about the finishing touch. It is always a good idea to firm up the customer after he is sold and the TO is one of the best ways to do it, for example, you call over the manager. You say would you please look over this contract and give me an okay

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and he answers, I see Mr. Smith has purchased an excellent piece of property.

Ladies and gentlemen, you have heard a lot of talk about the contracts, about property reports. At these sales dinners this was a very timed format. They arrived at 7:00 o'clock. They had a warmup period. The warmup period was when they were given the confidential survey which asked them what was the highest percent that they were receiving on their present investment, just to kind of get them in that mood of investment, making money.

After the warmup period they had a film. Then they had dinner. Then there was another film. Then there was a speaker's presentation and then the contract was whipped out.

Now, you have heard people get on that stand and say in response to cross examination by Mr. Fleming and Mr. Arkin:

Did you read the contract?

Did you understand that you were making an important decision?

These people, the sales people were trained to close these people in ten minutes. As soon as the speaker sat down, they were to jump up -- as soon as the speaker finished the presentation, they were to jum up and call the holds. They were to sit down and start writing out those contracts.

When did these people have time to look at the contracts?

More importantly, more importantly, what did those contracts say? Look at those contracts.

Did those contracts say anything about the growth of Albuquerque or the direction of growth of Albuquerque?

Whether they read those contracts or not wouldn't have prevented these people from being misled because what we are talking about is what they were told to get them to sign the contract.

Indeed, Hollander in training his sales people gives you a very good insight as to how they were handling the contracts and how they were handling these property reports.

You remember that there was a paragraph in the contract that said, I acknowledge receipt of protective covenants or restrictive covenants and applicable state and property reports and there was a place to initial.

You remember Mr. Jones saying, they gave me the contract, they marked an X and said initial and I initialed.

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Because he trusted these people, he said. Well, Hollander in training his sales people, if you remember he runs through how you should handle this contract situation.

He says: You sit down, you start filling out the contract and they are doing -- one of the sales people is playing the customer saying oh, I am not signing anything. He says no, no, no, just put your initials here to show that Ihave given you the restrictive covenants because I have to do that, I would lose my job if I didn't. You don't want me to lose my job.

Ladies and gentlemen, it was very clear that these people when they got to the end of the sales presentation had the contract, the people were given the contract to sign, it was filled out and they signed it.

The takeover time was ten minutes. If they hadn't closed that person in ten minutes, another person was on top of them.

When did these people really have any time to read contracts much less property reports?

Let's get to property reports. Property reports, the evidence is, wasn't given to a person until after he signed the contract and by that time the sale was made.

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Now, Mr. Jones said that he was given the contract, signed it. They gave him a packet of material, shook his hand and sent him home.

But, again, what is in the property reports? Now, Mr. Fleming and Mr. Arkin kept reading from a paragraph in the property report in New York State, actually it is called an offering statement in New York State, but it was only in New York State and it was a sentence on page 3 in the middle of a sentence that said -- let me get one for you so I won't misquote it. The point is these people didn't have any time to read the property reports.

Mr. Zaknich testified that if you were reading property reports it would have taken you a half hour to reach each report. There was a state one and there was a federal one, but take those property reports with you to the jury room and see what they tell you.

What do they tell you? The federal property report doesn't tell you anything. Look at it. I mean what does it tell you about a financial investment?

The New York State property report, now look at this. Just think about it in the context of a dinner.

Ladies and gentlemen, you have been sitting here for ten weeks. You have heard an awful lot of evidence.

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You have heard an awful lot of facts. The people who went to these dinners got there at 7:00 o'clock and they left about two and a half or three hours later. They don't have the facts in front of them that you have.

They only had the whole procedure. What you should do is try to recreate the dinner party. Recreate what people were told, what they were given, what information they had and see what a reasonable person would have believed based upon the information that they were were given in that short period of time in those kinds of circumstances with people jumping up and calling holds, with films being shown, with maps being handed out with arrows pointing to Rio Rancho.

Now, the evidence has been that people were given property reports after they signed the contract with the promotional material.

Okay. Assuming somebody looked at this, found it and realized it was important, in the speaker's presentation it is not referred to from the front of the room, I can tell you that, nobody was taking a half an hour and saying I am going to take you through this property record. That was not the procedure. Why are they now making the big deal about the property report.

The property report goes on in fine print for page after page after page. Mr. Fleming and Mr. Arkin keep pointing out one sentence that appeared in a property report beginning in December of 1969. So anybody who bought before December of 1969 didn't have that one sentence in it.

The one sentence is on page 3 -- I have to find it -- paragraph 2:

> Lots may also be purchased for speculative purposes but such purchasers are advised that resale for profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years.

Okay. It says lots may be purchased for speculative purposes.

What does every piece of promotional material tell them? That it is a safe, secure and guaranteed investment. The guy up in the front of the room is telling them it is a buaranteed investment. He is not saying speculation.

Are these defendants seriously saying because there is a sentence buried in here that says speculation that these people should have known that this was sold for speculation notwithstanding the fact that the guy in the front of the room is saying that this is a guaranteed investment program as guaranteed a program as you will ever find? Is that what they are trying to make you believe?

Now, you heard the circumstances of what went on at these dinners. You heard people give testimony and say they didn't know whether they saw it or they didn't see it. These things weren't pointed out. No sales person was saying, listen, look at page 3 under paragraph No. 5, second sentence.

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They are pulling out that one little sentence and saying, they should have known. Well, even so, what does that sentence say?

Resale for a profit may be difficult in view of the fact that water and utilities may not be available.

These defendants are saying, it's growing so fast, it's the only direction it can grow, water and utilities are going to be available in a few years because the growth is so rapid. What information does this really give you?

You look at this property report and these offering statements. Now, Mr. Fleming argued in his opening that everybody had these property reports.

The testimony is very mixed on that, ladies and gentlemen. The testimony in this case is that the property reports were put on the table under literature, under sugar bowls, they weren't emphasized. You certainly know on the basis of the scripts from the front of the room that it wasn't emphasized from the front of the room.

You also know that the salesmen's time was of the essence. You think a salesman is going to start picking this up and run through it when he is being told by the training manual that his time is of the essence and he has only got ten minutes to close and he should start having a takeover if he doesn't close in ten minutes and these defendants are now going to hide behind the property reports that has one sentence that says speculation when everything else says safe and secure. Is that reasonable? Is that how they are going to try and convince you? Is that what you are willing to accept on the basis of the evidence you have heard in this case?

After the sale was made, the customer goes home, he goes home with his packet of material. If he went home with his packet of material and still looked through this, you read it and see if you understand it. You read it and see if it makes sense.

I suggest to you that if you read this carefully you will find that this is one of the most confusing documents you have ever read. This document wouldn't inform you in the least about a financial investment.

This document doesn't talk about the growth of Albuquerque. The contract doesn't talk about the growth of Albuquerque. That gives you no more information about why you bought that property.

What gave you the information about why you bought the property was the sales film, was the speaker's presentation and the promotional material. That's what was given in terms of information about why you should buy the property

The day after the sale, the salesmen are trained, call up the buyer. Head off buyer's remorse.

There is a script for the confirmation call. The script is very clearly you and Mr. Jones or whatever were not intenting, I am paraphrasing now, were not intending to move to New Mexico, were you? I see, then your property is for investment, that's what most of our home site owners buy.

Ladies and gentlemen, we are not saying in this case that no one bought without any idea of moving there. What we are saying is that the primary inducement for sale, for purchasing this land was a financial investment.

Some people thought it might be a nice place to live and some people thought they might relocate there. Fine. For the people who bought to relocate there, for the people who bought who did not want this as a financial investment to resell at a profit, then they are not part of this case.

The defendants want you to believe and want to hide behind the community that they have there. They say, but we have built a community.

I said to you when I first spoke to you, we do not contend that there is not a community there. There is. There is a community. There are 1800 homes. You can look

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at all the photographs you want of that community.

These defendants knew that a certain per cent of the people would want to relocate, but it was a very small per cent.

Do you remember the testimony of Mr. Avellanet? Mr. Avellanet said that he was hired to do a report for Rio Rancho and he did a report for Rio Rancho.

He was told by Herman Oberman that they expected only 5 per cent of the home site owners to move and to relocate. That makes sense. That makes sense. Some people would move, fine. But most people weren't buying to move and they weren't selling to people who only wanted to move. That's very clear.

So the fact that these defendants built a community is not the issue in this case bec ause the community that they built was small compared to the entire property.

Ladies and gentlemen, Rio Rancho Estates begins here. This is the Bernalillo-Sandoval County line.

It comes over here by the Rio Puerco and goes up. It continues to go up.

Rio Rancho is twice the size of the city of Albuquerque today.

Rio Rancho Estates has 1800 nomes. They have set aside certain land that they didn't offer for sale nationally.

The point here, ladies and gentlemen, is these defendants always knew what the demand was going to be for that community.

1. They knew that from the national market maybe 5 per cent would move. Maybe it would be a little bit more, but they knew it would be a small percentage that would move.

The evidence in the case has been that the people who do live at Rio Rancho today are people who bought home sites and moved. Part of that 5 per cent.

The people who live at Rio Rancho today, except for the 50 that Mr. Kearney talked about, are not people who moved as a result of the growth of Albuquerque, who bought the land in other parts of the country and then relocated.

So the fact that those people moved and that there is that community there is not a part of this case. These defendants are trying to hide behind it.

Where did these defendants really address the issues in this case? When they cross examined witnesses in this case, what did they ask them: How much did you make when you resold your house in Staten Island or Brooklyn?

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Is that the issue in this case? That's not the issue in this case, that people made money selling their houses.

They weren't selling this land to people saying, you are going to have to go out and start building houses.

It is very interesting the people they called as witnesses.

Remember they called as a witness, I think it was, Mr. Frappier, who lived there. He bought to relocate. His sister lived there. He bought to relocate. He didn't go to a sales dinner. He built one house and now he is exchanging in and he is building another.

Mr. Kearney, he is going to exchange in his second lot for his son. But these are people who wanted to move there and who want to build there. That's fine.

We are talking about the people who didn't want to build there, who didn't want to move there, who wanted to resell. That is the issue in this case. Don't allow the defendants to keep side-tracking you on people live there and they are happy there. We say, fine, if people live there and they are happy there, that's teriffic. Gustave Mols is happy living there. He is not happy with his $30,000 investment. That he can't get rid of. Gustave Mols was lucky, he was able to sell one piece of his property.

He's got $30,000 of property left that he bought on the basis that Albuquerque could only grow through Rio Rancho.

Let's go back to how the defendants continued this situation. After the sales dinner is over and the confirmation call is made, then they start sending out letters, how your land has gone up in value.

Gone up in value. What does that mean? If it goes up in value, value means what you can resell it for.

The problem is you can't resell this. The defendants keep saying it's gone up in value, but it hasn't.

They invite these people back to dinners. They keep telling these people that their land has gone up in value; that they should buy more and these people do. I mean they believe that these price increases mean that their land has gone up in value and that's what the defendants intended them to understand.

Gustave Mols said I believed I was a rick man. I went back to these dinners and they told me my land had gone up in value; those price increases didn't mean that the land had gone up in value. It didn't mean that the land could be resold.

What it meant is really stated [illegible]oward Friedman in his speech, Exhibit 549. This is an address by Howard W. Friedman to the meeting of New York Society -- I am sorry, to a meeting of New York Society of Security Analysts.

Mr. Friedman says: The increase of our prices has not been offset by any increase in cost of product because, as you know, our land and development costs are fixed. The more successful we are in sales development, the higher our sales prices will go. This means that our gross profits should continue to increase as long as our selling prices can be increased.

So increased selling prices meant profit to the AMREP Corporation and to the shareholders of AMREP. The major shareholders of AMREP happen to be these defendants.

So when they were raising their prices, it didn't mean that these people could resell at that price. It meant that AMREP was getting profit out of it.

Beginning in 1961, Chester Carity owns 379,150 shares.

Henry Hoffman in 1961 owns 464,750 shares.

That's in '61 with Carity, 379; and in '75, 263,000.

Mr. Hoffman owns 464,000 shares in '61. In

1975, he owns 300,000.

Howard Friedman owns 111,000 in '61; 85,000 in 1975.

Dan Friedman owned 78,000 shares in 1975.

These are the offices that these defendants on trial held in AMREP Corporation.

Remember, ladies and gentlemen, that the evidence in this case is that all of these defendants, these individual defendants who are on trial here, attended sales dinners, they knew the statements that were being made.

As a matter of fact, the evidence is that Mr. Carity, Mr. Hoffman, together with Mr. Mandel, worked on the sales scripts. The evidence is that Mr. Carity approved the advertising.

The evidence is that Mr. Hoffman participated in writing the advertising and in producing the films.

The evidence is that Mr. Hoffman played a role in the film "The West Side Story."

The evidence is very clear in this case that these defendants were pulling the strings. They were in the front office and they were sending out their Sid Hollanders to train their sales people.

They were sending out their tigers because the sales people were under teriffic pressure to close, to keep those closing rates up and to keep making those sales.

For example, there is a memo from Chester Carity, Exhibit 358 in April of 1968, and he says:

I also noticed that although your closing rate -- and this is to the St. Louis office, to the Missouri office -- I also notice that although your closing rate on HSO sales was better than your previous month, it is still only 12 out of 33, not quite good enough.

Your referral sales of 8 out of 19 was also not good enough.

On both of the above it should be one out of two.

I also notice that the down payment percentages slipped. Watch it.

This is going too low.

Then at the end he says: Keep interviewing men and hire a few more good ones.

Then in the same year Mr. Mandel, Duke Mandel, writes a memo to the St. Louis office also and he writes:

The overall performance is good. Keep up the pace. Don't do what many managers do, relax. Keep recruiting and training to upgrade your manpower.

Then he says, compare and he gives three sales people's names were the tigers on your team.

This is in 1968. Compare these three sales people who have lower closing rates, I am referring now to 360. Their closing rate is only 18 per cent as opposed to the tigers' closing rate of 40 per cent and 38 per cent and 33 per cent.

(Continued on next page.)

These individual defendants, ladies and gentlemen, they are back in the corporate offices of AMREP sending out memos saying to salesmen, "Get those closing rates up."

Dan Friedman is sending out memos saying, "Time is of the essence. Keep the pressure on. Get the urgency. Use the mass psychology."

They are the ones that are pulling the strings. They are the ones who are sending out the tigers. They are the ones who are distributing that training manual of recruiting tigers.

And when you listen to that tape of Sid Hollander, he is their tiger. He is their guy. He's just what they want, because he motivates the sales people, he gets the sale, he closes, and that's what they care about; closing and getting the sale.

So if they start arguing to you that this may be a few excesses by salesmen, don't be fooled by them.

These are the people who are pulling the strings in the back. Don't let them hide behind the salesman and say, "Gosh oh gee, I didn't know they were saying that."

They knew what they were saying.

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. FLEMING: I object to that.

THE COURT: Sustained.

The objection to your statement that the defendants knew is sustained, unless you point to some testimony to that effect.

MS. HYNES: The evidence in this case is that these defendants attended sales dinners, that they listened to tapes, and the evidence in this case is that Chester Carity listened to a tape of a training session.

There is no evidence that Chester Carity listened to the tape of Sid Hollander, but Sid Hollander did conduct a training session, and you have that tape in front of you.

Another sales technique used by the company and by these individual defendants was to have price increases and to use the price increases to hype the sale. Now, that is Dan Friedman's phrase, to hype the sale.

Exhibit 993-A, July 14, 1972.

"Good news. The next price increase will be effective October 1, 1972. That gives you approximately two and a half months during which this powerful selling stimulant can help hype your sales. Everyone knows a price increase is sheer selling dynamite. Start exploding at once."

From the training manual, which was distributed and characterized as the bible. The training manual is Exhibit 752-Z.

"Face it, nice guys often do finish last. But you cannot carry a man just because he is a good guy. The intelligent approach is to reevaluate the weakest salesmen each month."

The testimony of Lawrence Perlmutter here is that if a salesman's closing rate wasn't high enough, he was let go.

They wanted the tigers, they didn't want the pussy cats, they didn't want the nice guys, they wanted the guys who could close, and that's what was the company policy in respect to who their sales people were and what kind of sales people they wanted.

After the sale was made, the company sent out letters. And let me give you an example of some of these letters that were sent to people telling them about the increased value of their land, telling them about the increased profit potential.

This is a letter dated April 6, 1972, to Jack Morden. Mr. Morden was a witness here. This is Exhibit 122-L.

In the middle of the letter:

"Thus, every sign, new homes, added recreation facility and more industry at Rio Rancho Estates, as well as continuing rapid growth in neighboring Albuquerque, points to the ultimate realization of profit on your investment. This will insure your retaining" -- excuse me.

"That's why we urge you to bring your account up to date" -- this was a delinquency letter -- "by sending us your check today for $446. This will insure your retaining your profit potential in Rio Rancho Estates."

After the sales were made, after they left the sales dinner, letters were sent out saying price increases, increased value, increased profit potential.

Then the people started to ask about resale.

The people had been told that the land values had increased dramatically.

For example, 167-I is a letter to Mrs. Hampe. She was the lady from Middlefield, Connecticut. That letter is dated January 27, 1970, which states, "Land values have increased dramatically in Rio Rancho Estates and Albuquerque because of the completion of I-40 and burgeoning population of the city which demographers assure us is moving in our direction, and we want you to remain part of this new city which we are building on the outskirts of Albuquerque so that you will be able to utilize the expected profit on the investment you made sometime ago."

The evidence here, ladies and gentlemen, is uncontradicted that there is no local resale market in Albuquerque. The Albuquerque Board of Realtors sent out a letter at the request of their members, after they had been receiving one to three letters a day, the Multiple Listing Service had been receiving one to three letters a day for three years from people who wanted to sell their land. That increased up to five letters a day, and finally the Multiple Listing Service of the Board of Realtors sent out a form letter, and that form letter saying of 690 listings, not inquiries, actual listings, only 20 sales had been made and that little, if any, local market existed for this land. And that's as of 1974.

The evidence in this case is also that customers were writing to Rio Rancho asking about resale. In fact, the evidence is that customers were told that a resale office would be set up. In other words, not only was this a good investment, but this company was going to resell it for you.

And there were customers who were told, particularly customers who bought in the late '60's, that the company was going to set up a resale office. And the testimony varies. Some were told it would take place in about two years.

Mr. Lederman testified that Leonard Geller, who was the general manager of ATC, told him that a resale office would be set up in two years.

These people believed that they could get their money out of this in a short period of time, that they could resell it. If a resale office was going to be set up in two years, certainly they could be able to resell it in two years.

Well, no resale office was set up. What the company did then was to start to say, "We haven't set up a resale office yet."

That was one of the form letters.

Another form letter was, "We are a community developer. Rio Rancho is a community developer, not a real estate broker, therefore, we can't help you with resale."

The testimony in this case about people trying to resell this land has been volumimous.

Remember Mrs. Greenberg? Mrs. Greenberg was the lady who was a little hard of hearing and I had to stand over there and yell at her.

Mrs. Greenberg wrote a letter to 75 realtors in Albuquerque and she couldn't get anybody to list.

She got one response and even then he wouldn't list for her.

There simply was no local market in this.

These defendants, year after year after year, kept selling this land on the same false and fraudulent representation that Albuquerque was bursting at the seams, that residential land was scarce and that there would be a demand for this land.

Indeed, these defendants sent out letters saying that a local market was premature. Those letters started to go out in 1968, they were sent out in 1969, 1970, 1973. At the same time they are saying that a local market is premature, they are turning around and selling to people saying there is a great demand and that Albuquerque can only grow through Rio Rancho. And yet we have been at this for a long time, ladies and gentlemen.

These defendants were selling this land from 1965 on the basis that Albuquerque was bursting at the seams and could only grow through Rio Rancho. That didn't change. And yet there was no local market in 1965, in 1966, in 1967, in 1968, in 1969 and in 1970. Today there is no local market.

These defendants sold this as a sound financial investment on the basis that you could resell it.

If you can't resell something, what good is it as an investment?

I mean, what does a good investment mean if you can't resell it?

If this is supposed to be better than money in the bank -- you can at least go to the bank and get your money out. If this is better than the stock market, I mean, at least in the stock market, you can sell it maybe at a loss, but you can sell it.

You can't do it with this land.

These defendants knew all along there was no resale market.

Rio Rancho was a member of the Albuquerque Board of Realtors. They joined in 1968. They continued to be a member of the Albuquerque Board of Realtors. Rio Rancho was sending out the letters saying the local market is premature, at the same time they are selling it as the safe and secure financial investment which could be resold. At the same time they are saying, "We will be setting up a resale office," they are saying in 1968 it is premature for the local market.

And then the final icing on the cake is in 1968 -- let us get the chronology.

In 1968, they start sending out this letter the local market is premature.

In 1969, they are sending out that same letter. And in 1969, they acquire another 37,000 acres of this land.

Now, this is at the same time that they are writing to people saying there is a scarcity of land in Albuquerque.

They are able to go out and buy another 37,000 acres of land that adjoin the property.

This is the first portion. That is the King property.

The property north was the property that they bought beginning in August of 1969, and ending in January of 1971. They were able to buy that property at an average price, from the King brothers, of $180 an acre.

Now, remember the memo with respect to the King brothers' property. Let me read it to you.

The company at one point was considering buying state land.

MR. FLEMING: Is that in evidence?

MS. HYNES: This is Exhibit 93 in evidence.

The state land are those alternate pieces of property here (indicating).

This memo relates to the poss le acquisitio of this state land, and it is dated January 27, 1971.

It states: "I met with Victor Salizar concerning the actual acquisition of state lands and pointed out to him that we had no intention of paying $235 an acre as that price did not represent the average price of the King and BLM acres contiguous to the state lands. Salizar indicated that the state appraiser had a figure from $180 to $200 per acre. I wanted to disabuse the folks down there of any notation that we would pay $235 top dollar. Actually, the King acres have been acquired at an average price of $180. The $235 per acre involved only approximately 2500 acres."

Now, when these defendants made this acquisition of the King property at $180 an acre, there had been some development on the property. The original price for the property that they bought from Snow was $178 an acre. That's in 1961. In 1969 through 1971, they pay $180 an acre.

Mr. Arkin said in his opening, well, that's because it's wholesale, it's bulk. $2 an acre more?

Now, with respect to the King property, they did have to buy some right of ways from the Santa Fe Railroad and that cost them some additional money on some of the property,which was about $35 an acre. But the King property was able to be purchased for $180 an acre; $2 more than they paid ten years earlier. And they were representing that this land had rapidly increased in value and it had rapidly increased in value because of the development that Rio Rancho was putting into this land. And yet when they bought the King property, the development was there.

(Continued on next page.)

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It also says something about the value of the land when they won't pay more. I mean, $235 an acre for the state land was too high. They didn't want to pay that much.

In 1969 and in 1970 -- if you will just give me a moment, I will tell you what they were charging customers for an acre of land at that time and representing to customers as to why this was such a valuable investment.

(Pause)

This is an offering statement dated April 28, 1969. They began acquiring the King property in August of 1969.

One acre, the range of prices --

MR. ARKIN: We object to this, your Honor.

THE COURT: Overruled.

MS. HYNES: The range of prices for the property, Unit 1 was $3070, Unit 16, $6,150.

In April 1970, when they started to offer the King Property for sale -- basically, the first 16 units are the Snow Property and 17 through 26 represent the King Property.

This is Exhibit 79 in evidence, which is an offering statement dated April 17, 1970.

An acre in Unit 21 was $4,010, an acre in Unit 22 was $3,735.

Commercial property in Unit 24 ranged from $1200 to $5500, and in 21, 1500 to $6400.

So that's what they were charging customers, $6400 for a commercial lot on the property that they paid $180 an acre.

The evidence in this case is that what they did was to blade in those dirt roads to state boundaries and that was it.

The evidence in this case -- I said to you in my opening statement that property that was sold nationally has not been developed, and that is true. It is uncontradicted.

The property that was sold nationally to people at these sales dinners is today still undeveloped.

Remember Mr. Kearney, the fire chief? He bought his acre in Unit 6. His son at that time was about thirteen and he thought it was a nice place, he thought it was a nice piece of property and maybe his son could use it.

His son is now moving out to Rio Rancho. Unit 6 is not developed. The utilities aren't into Unit 6 and, in fact, the utilities are being placed in the areas that are reserved by the company.

Now, there is a great deal of ooh-ha here, that, of course, the company then turns around and sells that piece of land with utilities to the customer. Of course they do.

Our point is that this company, knowing that only a small percentage of people would be interested in moving, set aside land to take care of that small percent that would move and they put utilities in that land and for the small percent that wanted to move they could exchange one lot for a lot with utilities. They had set aside enough land to take care of that small percent.

The problem is that they were charging everybody for utilities.

When you were paying those prices that I just quoted you, that included utilities, because your contract said if utilities haven't reached your lot, you can exchange.

The price included utilities. And yet they knew that they were never going to be called upon to put those utilities in and they had no intention of putting those utilities in the land. Only a small percent of the people were actually going to move and build, and that's all they cared about.

So you were paying for land that was to include utilities, but the company was very, very clever, they were only going to put utilities in that property based upon demand and they knew that there wouldn't be the demand.

They knew that when they were selling it that most of the people weren't going to move there, that they were buying it for a financial investment to resell it so they wouldn't be called upon to exercise that exchange right, and look at what their actions -- their actions speak louder than words. They only set aside a small percent of that property upon which utilities would be placed. And the area that they set aside is set out on this legend.

There are core areas set aside. And this area here, which hasnot been platted, is still an area that could be reserved for management (indicating).

Let me point out something to you in connection with that acquisition of additional land.

Government Exhibit 872 is a memorandum from Marianne Newman. Marianne Newman was head of customer relations. It is dated November 17, 1971.

It says, "Capp called very upset over the

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fact that they could not make payments in the amount of $298 and asked that we do something inasmuch as we were responsible for their particular predicament by advising them when they first purchased that the original 55,000 acres owned by Rio Rancho Estates was soon to be sold out and there would be no more property available.

"Shortly after their purchase, we announced the acquisition of 33,000 acres which circumvented their being able to sell their property within the year's time we had indicated they could do."

This is the director of customer relations writing that this customer said that she believed she could sell within a year's time.

And listen to the next paragraph:

"They apparently visited with Tony Catugno of MRC and said essentially the same thing. Tony documented their conversation and advised me of their problems. We reduced their payments for six months. They apparently had just received the coupons."

People were expecting to be able to resell this property. That memo says these people were told they could resell in a year and she agrees and she checked with the office and the office that sold them agreed.

So what do they do? They cut back their

payments.

These people were defrauded. That's what we are talking about here, ladies and gentlemen.

These people, Sam Kaufman is eight-one years old and he sold his property at an auction for $500, property that he bought for over $3,000. Sam Kaufman, when he bought that property in 1968, didn't believe that he couldn't resell it. He was in his seventies at that time.

He was led to believe that there was going to be a resale market, and at page eighty-one Sam Kaufman took whatever he could get, and that happened to be $500 at an auction in Albuquerque, because there is no market for this land, because these defendants misrepresented what the resale potential of this land was, because these defendants misrepresented what the investment value of this land was.

Think about the people who testified here. Think about the thousands and thousands of dollars that these people invested in that land.

Morris Gusowsky lives at Rio Rancho. He is happy living at Rio Rancho. He is active in the community. Morris Gusowsky has $45,000 in Rio Rancho land that he can't sell.

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Are these defendants trying to say that that's okay, that he should have known better if he read his contract?

I mean, there is nothing in that contract, there is nothing in that property report. These people relied upon these defendants' statements.

MR. FLEMING: I object to that, your Honor. I object to that. I object to that statement.

THE COURT: Overruled.

MS. HYNES: Put yourself in these people's positions. Think of yourself being at one of these dinners. Think of yourself being convinced that based upon what you were told that this was a good investment and that you should invest and you make your monthly payments and you keep making your monthly payments and maybe you are invited back to a dinner and you are told, "You know, your land has gone up in value," and you are convinced that, "Gee, maybe I should get some more of this."

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Think of the kind of money that these people have invested in it. Mrs. Clymer from Tumwater, Washington. Mrs. Clymer is seventy-one years old. She bought this property in 1962. 1962 and she sold it at auction for $500.

She paid in -- when she bought the property in 1962, she paid $795 for it. $795 in 1962. By the time she paid interset, her total payments in, according to the company records, it was close to $1,000.

She paid $1,000 over the years for this property bought in '62 and resells at an auction for $500. She is aged seventy-one.

She is not going to wait any longer. She believed that this was a good investment; that this was going to be a better investment than putting her money in the bank. She could have doubled her money in the bank.

Instead she lost. This was not the safe and secure financial investment that these defendants represented it to be.

Did Jose Luis Yguado invest in this land?

Did Mr. Jack Graham invest in this land?

Did Mr. Larry Perlmutter invest in this land?

Larry Perlmutter, who got on the stand, a company employee, still employed by the company, said he knew that it was sold as a financial investment. He also said that he believed these defendants were so honest, and he didn't buy this wonderful financial investment. Why?

What did Larry Perlmutter know that the people at the dinners didn't know?

Larry Perlmutter knew that there was no resale market for this land. These people didn't. They sat there and they were never told that we are selling you this land but you are not going to be able to sell it.

That we are selling you this land at the same time that there is absolutely no resale market in Albuquerque and no likelihood of a resale market for this land.

The company gives the excuse, well, we are still selling the land and when we are sold out, then, that is your chance.

Let's examine that. Is that really true?

This company wasn't selling in Albuquerque. This company was selling out of state. There is no competition by Rio Rancho in Albuquerque.

Darlene McCorkle testified that this company couldn't sell the land in Albuquerque. They were selling demand was going to be. Is there a resale market?

Mr. Arkin said in his opening statement that he was going to show that there was a resale market. He was going to prove it to you. Did he? Did he?

Mr. Fleming said in his opening statement, I want you to hold the government to what they say, and I agree with that, but think about what --

MR. FLEMING: Objection.

THE COURT: Overruled.

MS. HYNES: The defense counsel said in their opening. Think about whether they did prove to you that there was a resale market the way they said they would because they called somebody who lives at Rio Rancho and was able to sell one commercial lot.

We agree there were twenty lots sold in Albuquerque over a period of years. Gustav Mols got lucky and he sold one lot. That doesn't create a resale market and these defendants know it.

These defendants sold 77,000 lots. The fact that one of their purchasers sold a lot doesn't make a resale market.

Your Honor, can I ask for a recess, please?

THE COURT: How much more do you have to go?

MS. HYNES: Your Honor, I have quite a bit

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it to the people out of state. So there is no competition in Albuquerque. It's not as if you went in to Albuquerque you would see booths set up for Rio Rancho lots being offered.

So, when this company is sold out, that is not going to create a local market because they are not competing in the local market right now. They are not selling in Albuquerque.

So, that is just a lot of mumbo-jumbo. I mean these statements in the property reports that when the company is sold out, that is when you can expect resale.

You cannot expect resale unless there is a demand for this land. There is more than enough land in the Albuquerque area to support the population of Albuquerque. I will get to that in a few moments.

But these defendants over a fifteen year period sold this land and never told customers that there was no resale market.

Now, don't you think if you were buying this land you would want to konw that there was no resale market for it.

They sold this land on the basis there would be a resale market in Albuquerque, that is where the

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more.

THE COURT: How much more?

MS. HYNES: Probably another hour.

THE COURT: We will adjourn for lunch. Return at a quarter after one.

(Jury left the courtroom)

MR. FLEMING: Your Honor, we believe that Ms. Hyres' argument as to a supposed failure of proof on the part of the defendants amounts to a shifting of the burden of proof and ask for a mistrial on that basis.

THE COURT: Denied.

(Luncheon recess)

end t

AFTERNOON SESSION

1:15 p.m.

(In open court; jury present.)

THE COURT: You may continue.

MS. HYNES: Ladies and gentlemen, when we broke for lunch I was mentioning the lack of resale market in the Albuquerque area.

I have also mentioned that Mrs. Clymer and Mr. Kaufman both sold lots at an auction in Albuquerque for about $500 apiece.

Now, Mrs. Clymer bought her lot in 1962 and Mr. Kaufman bought his lot in 1968.

You will recall that Mr. Olguin, the auctioneer testified, and he testified that, one, there has been no resale market for Rio Rancho lots since he has been a realtor in Albuquerque and, two, that he conducted this auction and that 2,156 lots were listed for sale, 33 lots were sold and the average price for those 33 lots sold for was $500.

The company was selling -- and Mrs. Clymer testified that in 1962 she bought her lot for $795.

There has also been testimony from witnesses, and particularly from Mr. Sporzynski, that when he contacted the company and when other customers contacted the company and wanted to know about resale, they received a letter back saying, "We cannot help you with resale, but maybe you can advertise in a paper or contact a local broker in Albuquerque or sell through a relative or friend."

Well, Mr. Sporzynski did contact a local broker in Albuquerque and he wrote them a letter, which is Exhibit 129-Z, and he said that he had residential and commercial lots. He was willing to offer it on terms, pay it off over monthly payments.

He received a response to that letter, and the response is 129-A, and it is from Hapsas Realty and it is dated November 27, 1972.

It says, "Dear Dr. Sporzynski: Thank you for your letter of inquiry regarding land you purchased in the Rio Rancho Estates.

"I am sorry to advise you that land such as you have purchased has little or no value in the Albuquerque market. My advice to you would be to try to sell it in your own area."

You will recall Mr. Sporzynski lived in Ohio.

Mr. Sporzynski is 71 years old. He has invested, to date, between 25 and $30,000 in Rio Rancho property.

You will recall that Mr. Sporzynski said he bought the property in Rio Rancho, I believe, in the mid '60's, I think in 1966, and he bought it for his retirement and expected to be able to resell these lots and in that way provide for his income in his retirement. He is 71 now, and he is unable to sell those lots some ten years later.

We know what the company said to the customers about the growth of Albuquerque and what land was available, that is, that the only direction it could grow to and through was Rio Rancho. But let me review with you the testimony of other people who have come here and told you what land is available in Albuquerque.

You will recall -- just let me remind you, ladies and gentlemen, that there are three of these mosaics, these photographs, in evidence. We have been primarily dealing with the big one, which is the most recent one. It is the 1975 one.

But there is a mosaic for 1967 and there is a mosaic for 1959.

You can take those mosaics and you can look at them and see where the growth in Albuquerque has gone.

I believe that the testimony is now disputed that the most absolute growth in Albuquerque has been to the northeast over the last 15 years.

If you look at the mosaics, the 1959 one, the

1967 one and the 1975 one, that will be borne out, that the most growth has been in the northeast.

But let's talk about what these defendants, what Howard Friedman, what Daniel Friedman, what Chester Carity and what Hank Hoffman, AMREP Corporation, Rio Rancho and its selling corporation ATC knew about Albuquerque and its growth.

Back in April of 1962, AMREP filed a statement with the SEC, and I referred to this statement in my opening. This is in April of 1962.

In April, 1962, AMREP said, at page 14, and it is Exhibit 400-B, "The company does not, of course, know what growth, if any, Albuquerque will experience in the future or if any such growth will benefit the company."

When they were filing statements with the Securities and Exchange Commission with respect to stock, they were saying they didn't know what the growth of Albuquerque would have in terms of benefitting the company, what its effect would be.

Now, that statement was signed by Chester Carity, it was signed by Howard Friedman, and it was signed by Henry L. Hoffman and it was signed on behalf of the AMREP Corporation.

And you may find in the evidence in this case that

that was the state of the defendants' knowledge, that they didn't know that the growth of Albuquerque would benefit them. In fact, they knew quite the opposite.

That's in 1962.

In 1963, they receive, according to Mr. Yguado -- he did a report. He did a report for the West Side Association and he says he sent copies of this report or Rio Rancho purchased copies of this report, and the report is "The northwest mesa area, Albuquerque, New Mexico."

It is a feasibility study for the Montano Road-Montgomery Bluff Bridge.

I believe Mr. Yguado testified that it was done on behalf of some developers on the west side. And this is the report that Mr. Yguado says Rio Rancho purchased.

Now, this report of Mr. Yguado -- you will recall he was questioned about it at length, because this report says that there is 80 to 100 square miles in the northwest mesa area and that it is a self -- let me read it.

When all factors are placed in their perspective, it is self-demonstrating to the objective observer that the vast land mass of the northwest mesa area, buildable and usable in almost its entirety, is one whose continued growth and development holds vital and significant economic and social implications for both the city of Albuquerque and the state of New Mexico."

Mr. Yguado was saying in 1963 there is 80 to 100 miles, square miles, in the northwest mesa, and his study area -- this is the 1967 mosaic -- his study area of the northwest mesa was Route 66, which is Central Avenue, going up -- I believe he also testified it went to the village of Corrales West. And in that area there was 80 to 100 square miles which Mr. Yguado said, taken in its perspective, was buildable and usable almost in its entirety, and Rio Rancho bought six copies of that report.

So what does that say?

That says that Rio Rancho knows, if you are to believe that report, that there is a vast amount of land in the northwest mesa. And Mr. Yguado's report did not include all of Rio Rancho.

To the company's knowledge in 1963, for sure, there is a lot of land in the northwest mesa, and for sure there is a lot of land that is buildable and developable.

That report does not say that the only buildable and developable land in the northwest mesa is Rio Rancho.

Now, Mr. Yguado, you will recall, worked for the city planning department. He was in school, graduated, came to Albuquerque, worked for the city planning department for about ten months, then went to work for developers on the west side, for Mr. Snow.

We have heard about a subdivision called Snow Vista, and that is on the west side, and it is on the Atrisco grant, of which we have also heard a great deal about and of which I will speak a little more about later.

So in 1963, Mr. Yguado does his study for the developers on the west side and he also does a master planning study for Rio Rancho.

(Continued on next page.)

This is Mr. Yguado's master planning study, which is in evidence and you can look at (indicating).

Now, nothing that Mr. Yguado has stated in either of those reports indicates that there is a limited quantity of land on the west side for development.

The last contact, as far as we know from the testimony of Mr. Yguado, that he had with these defendants was in -- well, 1963 and then they came to him and wanted -- someone came to him on behalf of Rio Rancho to excerpt his report and he gave them permission.

But you don't hear any contact with the defendants after that. There was no testimony that Mr. Yguado was thereafter retained. He was retained to do that 1963 study.

But now Mr. Yguado is brought back in 1977, on behalf of Rio Rancho, to testify here, and he is brought back to testify in support of the defendants claims that the only direction that the city of Albuquerque can grow is to and through Rio Rancho and that there is limited land on the northwest for development.

Now, that might strike you as very odd, because Mr. Yguado's last report in 1963 said there was 80 to 100 square miles on the northwest mesa. But now he gets on the stand, in 1977, he is the only witness being paid in connection with giving testimony, and now he testifies that, no, it's not 80 to 100 square miles in the northwest mesa. As a matter of fact, he says, it's only six to eight square miles, and that six to eight square miles is down in here below the escarpment (indicating). Six to eight square miles, that's his testimony.

He testifies about he knows about Paradise Hills, he knows Paradise Hills is 8500 acres, which is already 13 square miles. So you start to wonder, how is it six to eight square miles?

He knows about Volcano Cliffs. That's about 4,000 acres. That's about the few square miles. He knows about College Heights.

You start questioning him and the answers start shifting.

Do you get the feeling when you are listening to Mr. Yguado that you are on quicksand? It is one think one minute, it is another thing the next minute.

Did he satisfy you? Did he give you a reasonable, believable, credible explanation as to why there was that leap from 1963, when it was 80 to 100 square miles that was buildable and developable, and now in 1977 there are six to eight miles below the escarpment and that's the only thing that is available for development?

And also remember now, Mr. Yguado is the one who is saying -- when he is asking about the statement in "This is My Land" that most of the new growth activities are taking place on the west side, he says that's true. Why?

Well, that's true because he agrees that most of the growth in terms of absolute growth, houses, people, businesses, has taken place on the northeast, but he says that this statement is true that most of the new growth activities are taking place in the northwest because that means master planning.

Okay, that means master planning. And he talks about master planning.

Paradise Hills is master planned, Volcano Cliffs is master planned. That's where the new growth activities, according to Mr. Yguado, is taking place.

But then he gets on the stand and he says, "Well, yes, they are master planned, but that does not mean anything because they are not developable."

He says Paradise Hills, it's master planned to 8500 acres. That is supposed to be where the new growth activities are taking place.

But now he says, but you can't build on it, you can't build on it, he says, because it has this problem with the escarpment. You can only build below the escarpment. Okay, you can only build below the escarpment.

So you look at Paradise Hills and you say to Mr. Yguado, "Mr. Yguado, look at Paradise Hills. Where is the escarpment that you are talking about?"

And Mr. Yguado is using this big mosaic, 1075.

And he said, "I'm talking about -- you see the golf course? I am talking about the area east of the golf course."

So then you ask again, you say, "The area east of the golf course?

"Mr. Yguado, look at the mosaic. All of the development is west of the golf course on the escarpment that you just told us you can't build on."

He says, "I know. They ran into problems."

What are we talking about? What are we talking about?

Look at this mosaic. You look at it. You tell me where the development is that he is now saying, and compare it to the development in 1967 west of the golf course.

So Mr. Yguado starts shifting again. So

master planning does not mean development, it really doesn't mean much of anything, it just, for purposes of his testimony here, though, it is supposed to mean to you that that statement in that promotional pamphlet was true.

Did anybody else say that statement was true?

George Carruthers said that's not true. Mr. Pierce said it was not true. Mr. Graham said, "Well, you are going to have to define growth activities, but if you are talking about residential, it's in the northeast."

Mr. Yguado shifts with the wind. And you have got to examine his testimony very carefully, because he is the only witness that these defendants have put on the stand to support the statements that they made to purchasers.

You know what else is interesting? These defendants do not have to call any witnesses. The burden is on the government. He doesn't have to call one witness. But they chose to call Mr. Yguado. And Mr. Arkin chose to tell you in his opening that he was also going to call Max Flatow, who was a noted southwest planner and who worked day in and day out iwth these people on plans. That's what he said in his opening.

Where is Max Flatow? Why didn't they call him?

Could it be that Max Flatow would not have agreed? Would it be that Max Flatow, they could not have gotten him to say the things that Mr. Yguado is saying up there. Think about what Mr. Yguado is saying.

MR. ARKIN: I object.

MR. FLEMING: Objection, your Honor.

THE COURT: I will charge the jury he was equally available to the government to call if they wanted to.

MS. HYNES: Mr. Yguado said the Atrisco Property isn't available for development. And we have heard a great deal about the Atrisco Property and the title problems.

Now, Mr. Yguado, when asked, "Mr. Yguado, are you aware that the Westland Corporation was formed to solve title problems to Atrisco?"

He said no.

He was the only witness who didn't know that.

Mr. Graham knew that, Mr. Carruthers, Mr. Pierce.

Mr. Pierce, who is the executive director of the Council of Governments, got on the stand and

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testified that the Westland Corporation was formed beginning in 1967 and 1968 to solve the title problems for Atrisco.

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And it is interesting, because in 1968, this Interstate 40, the Corronado Freeway, was completed. That's that kind of a loop-looking road on that mosaic.

So there was a reason to have this land looked at more seriously and a corporation was formed.

And Mr. Pierce testified that the title problems were solved.

He said, yes, there was a piece of litigation with respect to the outlying, the very outlying area, and Mr. Pierce testified that the Atrisco property comes all the way out to this Rio Puerco. So in the outlying regions there may be title problems that are in litigation, but basically Mr. Pierce's testimony is that those title problems have been solved and that that land is developable, the Atrisco grant.

Mr. Carruthers gave similar testimony.

Mr. Pierce and Mr. Carruthers both testified that the city, in fact, has plans for extending utility lines into the Atrisco property. And, indeed, the city does.

As a matter of fact, one of the Defendant's Exhibits, EL, guidelines for public systems for a portion of the area west of the Rio Grande. It is in 1975 and it is approved by the city council and the board of county commissioners.

I am referring to the map opposite page 19.

The legend reads, "Proposed west mesa development priorities. Initial development areas, water system.

"Atrisco trunk, college trunk," which is the College Heights area, "Volcano area," which is the Volcano Cliffs area.

So the city in 1975 is making plans for extending water lines.

There is already a water line in there, and this is their priority area for development and for capital improvements.

That's what Mr. Carruthers testified to.

Now, is the city making capital improvements in an area where they cannot get title?

Mr. Carruthers testified that the title companies advised the city that they could give clear title. The city wanted to put utilities in and they could give clear title.

So Mr. Pierce and Mr. Carruthers and this report are in evidence that the Atrisco property is capable of development and, indeed, there are plans to develop it.

Now, even Mr. Graham hedged his bets on the Atrisco property.

Mr. Graham's testimony was, he wasn't saying that the Atrisco property could not be developed, but it wasn't ready for development. I believe that's what he said.

Let me give you direct quotes.

Mr. Pierce, first of all, at page 4245.

The court was referring to the Atrisco property.

"THE COURT: Is that available for development?

"THE WITNESS: Yes, sir. As we indicated yesterday, this was the area where there had been, in 1968 to about 1972, consdierable legal restraints because of land ownership questions which has been resolved by the exchange of titles to individual parcels for exchange in stock in the Westland Development Company, whereas the internal land area questions were dissolved."

And he defines that area as 48 square miles.

Mr. Yguado, in his 1963 report, also referred to the Atrisco property, and in 1963 Mr. Yguado referred to the Atrisco property as capable of development.

Only now, in 1977, is he saying that it is not capable of development. And now in 1977, Mr. Yguado states that he is not aware of the purpose of the Westland Corporation.

Now remember, Mr. Yguado really hasn't done work in Albuquerque since 1963 or 1964.

Maybe Mr.Yguado is not as up to date as he thinks he is on the happenings in Albuquerque.

He certainly is not aware of this report by the city on water lines and having the Atrisco property a priority area for development, he is not aware of the Westland Corporation's activities in dissolving title problems in that area and, therefore, Mr. Yguado's testimony sticks out like a sore thumb on the Atrisco property.

Now let me tell you what Mr. Graham said. You have to listen to Mr. Graham closely.

Mr. Graham, at page 6378 and this is on cross examination:

"Q In your testimony you also mentioned the Atrisco land grant property.

"Do you recall that?

"A Yes.

"Q And you said that land is unavailable for development?

"A No, I didn't say that.

"Q You did not say that?

"A I said that's -- that they have taken the shares and set up a corporation called Westland Development Corporation and a lot of that land is not ready to be developed because of fee title problems.

"Q But it can be developed, is that right?

"THE COURT: Do you mean now?

"Q Yes.

"THE COURT: Can it be developed now?"

This is the witness: "To my recollection, the majority cf theland cannot be developed now."

Well, Mr. Graham also, throughout his testimony, stated that he didn't consider himself an expert, I mean, even when he was testifying on the amount of land in the northeast he said he wasn't an expert, so Mr. Graham is not aware of the activities of the Westland Corporation with respect to fee title on the Atrisco property.

But Mr. Pierce's responsibilities directly relate to that in terms of planning; so do Mr. Carruthers' responsibilities directly relate to that with respect to planning. So Mr. Carruthers and Mr. Pierce are the ones who know.

Mr. Graham also testified that he wasn't aware that West Gate Heights was on the Atrisco property.

So you have got to weigh who is testifying to what. Where is their knowledge coming from? What is their area of expertise?

Mr. Graham was not an expert. Mr. Graham is a banker.

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So on the basis of the record that we have now the two people and the two agencies that have planning jurisdiction and who compile data with respect to growth and development both are in agreement, plus an official city document, that the Atrisco property is available for development.

And, indeed, the defendant's own witness, Mr. Yguado, stated that back in 1963. His opinion has only changed now in 1977.

Then we move up.

The Atrisco property is both -- a portion of it is in the northwest quadrant and a portion in the southwest quadrant. But then you move up.

Mr. Pierce testified that this area is the Alameda grant.

I mean, basically, Albuquerque is all historically Spanish grants.

That is Alameda today. And he said there are 30 to 35 square miles of high potential development land below the escarpment available for development, 30 to 40 square miles.

Now, that is the same area that Mr. Yguado is saying is only six to eight square miles, and Mr. Yguado just in terms of doing his own arithmetic on how much is available in Paradise Hills and Volcano Cliffs, is contradicted on that figure.

But Mr. Pierce, excecutive director of the Council of Governments, whose responsibilities include monitoring data, says that there is 30 to 35 square miles in this area that has a high potential for development (indicating).

(Continued on next page.)

Now we go to the northeast.

Mr. Pierce testified that there is about 6,000 acres in the northeast in the Simms Property, and he testified that he believed that that 6,000 acres would be used up within the next ten years if the growth kept going in the way it was.

He also testified that he believed that the growth of Albuquerque would continue to the northeast until the land in the northeast, available land in the northeast, was exhausted.

So if you just limit yourself to the Simms Property and not get into North Albuquerque Acres, Mr. Pierce's testimony is it is 6,000 acres and it would be approximately ten years before that would be fully developed.

Mr. Carruthers testified there is about two-thirds of the Simms Property available.

You can just look at this mosaic and see the Simms Property is about two-thirds undeveloped.

Now, Mr. Carruthers -- this bulge out here, Mr. Carruthers testified -- and he is with the planning department -- that a plan has been submitted to the planning department for about 1500 acres in that area for development in some seven to eight years, and that is also in the Simms Property.

On the testimony in this record and on the testimony of the witnesses that you find credible, you have to determine if there is land in and closer to Albuquerque, land whether it is in the northeast or the northwest quadrant that is capable of development.

Basically, this land here, the government contends and the government's witnesses support it, is available for development (indicating).

Now, the defendants, you may find, in order to throw a smokescreen up, in order to justify their claims about growth coming to Rio Rancho -- there is no way they can justify it that it is the only way, but they start playing with density.

And when you hear average gross density you may find that a red flag should go up, because these defendants are taking what they call average gross density, and that is, all of the land within a given area, including land that nobody argues can be developed, like an airport, like a military reservation, so they use that in the base figure and then they divide all of the people into that area --

MR. ARKIN: I object to that, your Honor.

THE COURT: You can argue what you say the

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record shows, Mr. Arkin.

MS. HYNES: And then they come out with an average gross density of whatever it is, five people per acre, 5.6 people per acre.

Now, Mr. Carruthers was very troubled by that when he was being cross examined, because Mr. Fleming kept saying, "Now, we wanted to talk about average gross density," and Mr. Carruthers said, "But you are talking about two different things. If you are talking about density in developed areas, you use developed density.

"Look, this is a developed area. There is what is called a developed density. And the developed density is approximately ten people per acre in developed Areas. So if you are talking about areas that are going to be developed, talk about developed density."

And that's what was troubling Mr. Carruthers, because Mr. Fleming wanted to use a different premise. He wanted to go to gross, because that brings the average down.

You may find that that's a red herring that they are bringing in to confuse the issues in this case. You may find that they are going to try to do and convince you in the same way they were trying to convince people at their sales dinners that, in fact, the only way that

Albuquerque can grow is to and through Rio Rancho.

Well the fact is that there is land in Albuquerque, there is developable land in Albuquerque and when you are talking about land that is developable land and you are talking about what the development is that is going to take place on that developed land, on that land that is capable of development, you talk about what is your developed density.

MR. FLEMING: I object to that.

MS. HYNES: Even the defendants' own witness, Mr. Graham --

THE COURT: Overruled.

MS. HYNES: -- in talking about Taylor Ranch, he was talking about the developed density of Taylor Ranch. Do you remember that? He talked about three dwelling units an acre. And we are talking about developed density, which has been ten people per acre, approximately three dwelling units per acre.

That is low. That is the lowest.

And when you use the density for the developed areas, there is more than enough land capable of development in and around and closer to Albuquerque than Rio Rancho Estates to accommodate, by the official reports of the city from 1964 right to 1975, to accommodate a population--

in 1964 it was a population of 825,000 in the study area, and even then the report said they didn't think they would find enough people to put in the study area.

So when Mr. Fleming and Mr. Arkin start arguing to you about gross density and the city did it wrong -- George Carruthers has been with the City Planning Department for twenty years. You may find that he knows what he is talking about. And when he is talking about that you use a density, a developed density and not gross density, you may find that George Carruthers knows more about that than these defendants.

Now, the 1985 land use plan was published by the city which was in the possession of AMREP Corporation, Rio Rancho Estates. These defendants had this report in their possession. It is published in February of 1964 and it says, page 12, that the Northeast Heights will continue to have the most absolute growth.

Now let me also flag another issue.

In addition to having a red flag go up if you hear gross density, you may also have a red flag go up if you hear percentage increase. Where is the most percentage increase?

That means, and Mr. Yguado in one of his studies said, that in 1960 the population on the west side was 10,000 and so if you take that population of 10,000 and assume that it increases another 10,000, that is a percentage increase of 100 percent. Okay?

But if in the northeast you got a population of 200,000 and you have an increase of 100,000, you only have an increase, percentage-wise of 50 percent.

The percentages doesn't tell the whole story.

Absolute growth tells the whole story. Absolute numbers. So when you hear percentages and when they are trying to tell you that the northwest and the west side in terms of percentages has grown more or that, as Mr. Graham testified, that Rio Rancho grew percentage-wise twice as fast as the city of Albuquerque, you start asking what are the absolute figures. What is he starting with and what is he finishing with in terms of absolute figures because that is the other red herring that is being thrown in here.

Now let's go back to what the defendants knew about Albuquerque and the growth of Albuquerque. The defendants knew in 1964 that the city stated that the Northeast Heights will continue to have the most absolute growth. That is 1964.

Their dinner party started in 1965 and they started saying that the growth is in the absolute opposite direction and they know better.

On page 24 of this 1985 land use plan, which is in the possession of the defendants, vacant land. Now, the study area for the 1985 land use plan didn't take into account Rio Rancho. For good reason: No belief they had to.

The 1985 study area is this green outline and that was the area that they were saying could accommodate 825,000 people.

Now that 825,000 people in terms of projection was for transportation planning purposes. I mean it was the highest population figure they used in order to plan highways.

Now, keep that in mind because even Mr. Carruthers said, while the 1985 land use plan for city planning purposes used 825,000, it was not the belief that that was the most probable projection, but certainly if you are going to plan for public facilities, it is better to use the higher figure. That is what they used, 825,000.

Even using that figure the planning department made the following finding on page 24:

Vacant land. Within the study area there are 65,869 acres of vacant land. That does not include Rio Rancho. Compared with 29,913 acres of urban development and 16,826 acres of agricultural land.

There are large areas of vacant land in every quadrant of the city with most of it potentially developable vacant land within the study area to accommodate a population of more than two million.

Two million in 1964 without ever reaching Rio Rancho. The very next year Rio Rancho starts their advertising campaign saying, the only place that Albuquerque can grow is to and through Rio Rancho.

You may find from the evidence in this case that that is false and that they took people's money based upon those false statements.

Now, you have also heard this Wilbur Smith study. Now, the Wilbur Smith study also refers ton page 85 -- and this is the defendants exhibit, a study done in 1965, no evidence in this record that the defendants had it, but certainly it is a defense exhibit -- this is just an excerpt of it, but it is Exhibit EJ, but on page 85 the Wilbur Smith people also make the following statement:

The City Planning Department's estimates that there is sufficient developable land within the study area, the same study area, to accommodate a population of over two million not counting Indian reservations to the north and south of Albuquerque and the mesa to the west.

Now, that is in 1965, but there is another statement in the City Planning report on page 32, paragraph No. 12.

Albuquerque has an abundance of vacant land available for urban development. Even the most optimistic growth projections would not utilize this land within the current century.

Ladies and gentlemen, do you believe the people sitting at sales dinners who bought this land and who invested thousands and thousands of dollars, which totaled for the company millions and millions of dollars, were told that the city of Albuquerque had abundant land to take care of population projections; that there was enough land that would not be used up within the current century and they were not taking into account Rio Rancho and that this report was in the defendant's possession and in the very next year they started to sell the land on the premise that the only place the city could grow was to and through Rio Rancho.

They started to sell this land on the premise that Albuquerque was bursting at the seams, bursting at the seams with a report in their possession saying that Albuquerque could grow to two million without ever reaching Rio Rancho, with a report in their possession saying there is 168,000 acres.

Are these defendants going to try to tell you that they in good faith made those kinds of representations and took money from people on the basis of representations exactly to the contrary and they want you to believe

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that. That is what they are asking you to believe. That is what they are asking you to believe.

You remember Mr. Fleming or maybe it was Mr. Arkin, I have forgotten, I have gotten them confused at times, kept pressing Mr. Carruthers on was there any dispute on this density.

Mr. Carruthers said, no, there wasn't any dispute on the density figures. As a matter of fact, the dispute was exactly the other way. It was how are we going to find enough people to put it in there. It wasn't whether we were going to have enough land for the people. It was whether we were going to have enough people for the land.

Mr. Carruthers testified to that at page 4596. The question was: Was there also an argument about projected densities?

"A I remember an argument about that, that the concern was, it was hard to calculate enough people to fill up the space that we had within the area. I mean it was the other way around."

On page 39 of the official report. By the way, this is not the sole product of George Carruthers. This report does not rise or fall on George Carruthers. As a matter of fact, I think his testimony was, you know, he worked on it along with a lot of other people.

Page 39 of this report. The projected population of 825,000 for the study area was distributed to the four quadrants and then to districts.

Most of the districts were found to have more capacity than there were people that could be expected to fill them.

That was the belief of the planning department for the city of Albuquerque in 1964. These defendants, Howard Friedman, Chester Carity, Daniel Friedman, Hank Hoffman, go out and buy 55,000 acres. Hank Hoffman negotiate that purchase along with Herman Oberman of the 55,000 acres. They began to market it and sell it.

They had this report in their possession. Do you mean to tell me that they start selling that land excatly contrary to everything that the planning people for the city of Albuquerque, which they are making representations about, that these defendants are making the representations about the city of Albuquerque, where it can grow, how it can grow, and disregard the opinion, the official report of the city of Albuquerque as to where the city can and will grow.

The official report of the city of Albuquerque that says, listen, the growth is going to the northeast and these defendants turn around and start selling off land saying, the growth is to the northwest.

They don't sell it in Albuquerque. They don't sell it in Albuquerque because there are SEC filings saying 98 percent is sold out of state. They sell it to somebody in New York who doesn't know what the City Planning Department for Albuquerque is saying. They sell it to somebody in New York who believes that this is a big company and is credible and their salesmen are trained to put forth the credibility of the company.

Then we find out that the company and these defendants have a report in their possession that says exactly the opposite to what they are telling people in order to get them to invest money, a lot of money, as much money as they could get out of their pockets if you listen to Sid Hollander's tape.

There was no limit on how much land they could sell anyone. You only had to get a credit check if you got up to 14,000 or 20,000.

They kept trying to sell these people more and more land. Bring them back to dinners, multiple discounts, VIP parties. HSO referrals. Buy more and more land because it is such a good investment. They knew it wasn't a good investment.

They couldn't have made those statements in good faith.

MR. FLEMING: I object to that, your Honor.

THE COURT: Overruled.

MR. FLEMING: I mean objection to the declaration.

THE COURT: Overruled.

MS. HYNES: Now we get to 1965 and Mr. Avellanet.

The defendants had Mr. Yquado do this master plan in '63. We don't hear from Mr. Yquado again according to the testimony, there isn't any contact, as I say, except for that excerpt.

There is a map in here and a lot of prose about Albuquerque and so this is supposed to be the master plan, a part of it, I mean this report is the master plan.

Then in '65 the defendants hire another firm to do a master plan. What does that tell you? Maybe the defendants didn't take Mr. Yquado very seriously. Maybe the defendants didn't rely upon Mr. Yquado.

The only use you may find the defendants made of Mr. Yquado was to bring him in here and have him testify. They didn't rely upon his planning report.

This is how the land was platted. It doesn't

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look like that map in Mr. Yguado's master plan. They went out two years later and hired somebody else to do a different master plan. Now they are trying to tell you that it was Mr. Yguado all along they were relying upon. They couldn't have been. Not even Mr. Yguado was saying in 1963 that the only place that Albuquerque could grow was to and through Rio Rancho.

Then we get to the situation where they hire Harman, O'Donnell & Henninger. You had Mr. Avellanet on the stand. Mr. Avellanet testified that he had meetings with Mr. Walsh, Mr. Sommerholder, he had discussions with Mr. Walsh and Mr. Sommerholder about the direction of growth, about growth on the west side.

Mr. Avellanet testified that Mr. Walsh told him, growth on the west side was slow and that the growth and the direction of growth of Albuquerque was to the northeast. To the east and the northeast.

That is Mr. Walsh. He was there on behalf of Rio Rancho.

Now, do you think if Mr. Walsh knew that the direction of growth was to the east and the northeast that he was going to keep it a secret from these defendants? I mean do you seriously believe that these defendants didn't know in fifteen years that the growth was to the east and the northeast? That back in 1966 that these defendants didn't know that the growth was going to the northeast?

Remember Mr. Musgrove's testimony. He said he objected to the statement in the film, but he said more than that. He said that when you have a trend of growth in a town, in continues in that direction and that the trend of growth in Albuquerque was to the northeast.

Isn't that what the testimony in this case has shown over fifteen years. I mean not even Mr. Graham can dispute that. Not even Mr. Yguado can dispute that.

But these defendants were specifically told that by Mr. Avellanet.

In 1965 Mr. Avellanet, the firm of Harman, O'Donnell, sent the defendants a preliminary finding which said that the growth trends would continue to the northeast and that there was sufficient land in and around Albuquerque to satisfy the growth projections.

Now, Mr. Avellanet came from Denver, that is where Harman, O'Donnell was, he came down and he was going to study the local market potential for this land at Rio Rancho.

There were two markets. There was the national market, which he really didn't concern himself with, and there was the local market that he was going to take a look at.

He said to these defendants, look, you are not going to be able to penetrate the local market unless you do something very special with your land because there is other land that has more competitive advantages than your land; that's in closer to the city of Albuquerque and, therefore, the growth would go there.

So what he said was, your land east of Highway 528, there is a highway that runs here (indicating) and that's the bluff land, he said, that's special. It wasn't offered for sale nationally.

He said, now, if you take that land and develop it in large acres, allow horses, make it river bluff property, then you migth be able to attract a local market from Albuquerque because that kind of property and that kind of situation doesn't exist in Albuquerque.

Then you would have something unique, but unless you have something unique, the Albuquerque market isn't going to come up here. The Albuquerque market in his view was that the west side over here (indicating), the northwest quadrant, had the competetive advantage. They were clower to the city.

He testified that he thought the views were better from there and, in fact, that's where Taylor Ranch is today and doing well. Better, you may find, than Rio Rancho.

They have an eight-year plan for 5,000 houses. They are closer in to the city of Albuquerque. That's what Mr. Avellanet was talking about. He said the only chance you have in the local market is to utilize that area east of 528.

So what does all this mean? Mr. Avellanet said several things in his report. He said, one, the growth trends are going to continue to the northeast because the employment sectors are in the northeast and that's where the development is going to continue and that there is land in the northeast.

Now, that has been corroborated by every witness here, the trend was going to continue to the northeast.

And, he said, there is sufficient land closer to the city of Albuquerque -- let me read from page 40 of Exhibit 66 -- despite the expected doubling of Albuquerque's population over the next 20 years to 600,000 -- I will get to that in a moment -- ample, undeveloped, suburban land exists more approximate to the city in its desirable parts than Rio Rancho's land such that only a

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small and selective local market penetration by Rio Rancho is likely over the 20-year period from 1966 to 1985.

What he was talking about was that land east of Highway 528. If you do that the right way, you can attract a local market.

He said and he said on this witness stand that land on the west side of 528 he saw no advantage, no competitive advantage to the Albuquerque market.

Now, Mr. Avellanet was also informed about what the defendants' intentions were with respect to the national market.

Mr. Avellanet in his preliminary findings came in with a plan of several hundred --

THE COURT: Pardon me, Ms. Hynes, you have gone over an hour so I suggest you start closing down.

MS. HYNES: Mr. Avellanet testified that he was advised at a meeting where there was in attendance Mr. Oberman, Mr. Walsh and Mr. Sommerholder, that the plan for Rio Rancho in terms of a national market and what they saw demand to be in the national market was 5 per cent. That was their operating premise, that it would be 5 per cent.

25 per cent thought they might move, but only 5 per cent actually did move. That was the operating

premise upon which they went ahead and put in utilities and reserved land.

That testimony is uncontradicted. Again, these defendants do not have to call any witnesses, but they have not called Mr. Walsh to dispute the fact that Mr. Avellanet said he told them that the growth was to the northeast. They have not called Mr. Walsh to dispute the fact that Mr. Avellanet said that he was told that only 5 per cent of the national market would, in fact, move to the property.

Isn't that, in fact, what is going on, ladies and gentlemen, because in 1969, when these defendants bought the additional 37,000 acres, they had approximately 315 homes on 55,000 acres.

The city of Albuquerque today is about 56,000 acres. They had 315 homes on 55,000 acres and bought another 37,000 acres.

In their SEC filings again it tells the story. The primary business of this company is to sell subdivided land, a secondary business and to a lesser extent they build houses. We are concerned with the primary business of Rio Rancho, the sale of the subdivided land as a good financial investment. The case does not involve the secondary part of their business which is the development of that community for whatever demand there is because these defendants knew what the demand was. The demand was going to be very little. It was going to be small from the national market and almost non-existent from the local market.

You will remember that there is an exhibit in evidence, 657, which is the 1973 memorandum where they are complaining about how can we get people from Albuquerque to move out to Rio Rancho. That is in 1973. That supports Mr. Avellanet's findings that they are not going to have a significant impact on the local market.

What does that mean for people who bought commercial property? That's one thing you have to keep in mind. Mr. Fleming and Mr. Arkin cross examined people on, you have an exchange right, you know you can exchange a half acre of residential into the building area.

Well, that's all fine and dandy if somebody wants to build there, but we are talking about the people who bought to sell, not to build, to sell.

But for the people who have commercial property, they have no exchange right so they are dependent upon the development of Rio Rancho and if you look at the actions of these defendants, you will be able to see that that development is not going to take place in any foreseeable future where the commercial property would ever get utilities.

In other words, the utilities will be placed in core areas, in the areas that have been set aside and not sold off nationally.

By the defendant's plan until the core areas are filled up, they won't extend utilities to any other part of the property.

Well, if you wait for the core areas to be filled up, the present projections for housing is 350 to 400 houses a year. In fact, the evidence in this record shows that they have never built 350 to 400 houses, but that's their projections.

If you have 350 to 400 houses a year and you have got 77,000 lots sold, how long is it going to take to develop?

In 15 years they have developed less than 5 per cent. So when you have Mr. Davis, remember he is the man from Port Jefferson, he is 74 years old and he owns commercial property. He can't wait until these defendants fill up these core areas because you cannot exchange your commercial property. You have to wait until all the core areas are filled up.

Do you know what has been missing in this testimony

There are no projections by these defendants as to when it will be done.

MR. FLEMING: Object to this, your Honor.

THE COURT: Sustained. No burden on them to produce any proof.

MS. HYNES: When I asked Mr. Perlmutter, were you shown any projections for when Rio Rancho would be fully developed, he said, no.

Now, the Taylor Ranch has a plan of eight to ten years for development. Mr. Perlmutter, who has had responsibilities over the last year for construction, has received no such information on when Rio Rancho will be fully developed, if ever.

Ladies and gentlemen, you may find on the evidence in this case that the land that was sold to these people as a good financial investment was not.

The commercial land that was sold to these people, which was far more expensive than the residential property, which did not have an exchange right, which was out in the areas that were undeveloped and the likelihood of development ever reaching those parcels was remote, that this land was not a good investment; that this land had no resale market and none has been proved; that the growth of Albuquerque is not in any way dependent upon

Rio Rancho and, in fact, it's exactly the opposite, that Albuquerque can grow, has grown -- has grown -- in the past 15 years, the testimony has been anywhere from 70 to 100,000.

70 to 100,000 people are now in Albuquerque and they are not -- they didn't have to go to Rio Rancho as these defendants represented. That growth didn't go to Rio Rancho. The growth to Rio Rancho came from the national market and that's what the defendants knew and that's what the defendants knew based upon the city planning reports. When these defendants argue to you about reports, just be sure, for example, the COG's report, the recent COG's report, that is a 1976 report, they are now talking about the year 2000. These people weren't talking about the year 2000 when they bought in 1965, '66, '67, '68. They were told a resale office would be set up in two years, 25 per cent a year -- if you want to wait longer --

MR. FLEMING: I object to that.

THE COURT: Overruled.

MS. HYNES: You can wait longer and you can get a higher return on your investment. But these people were led to believe that there was a resale market and that this was a marketable product because the script said it was a marketable product.

The script said that it had resale value. What good is an investment, what good is having thousands of dollars in a piece of land that you can't sell? What good is being told that this investment is more valuable because the price went up and you can't resell it?

That's what this case is about, ladies and gentlemen.

Now, these defendants will talk about people going out to see the property. People did go out to see the property, but people were told that the property, the same thing that they were told back in New York, the same thing they are trying to tell you today, that there isn't land in Albuquerque to take care of the growth. That it has impediments, but you are in a position to listen to Mr. Carruthers and Mr. Pierce and judge for yourselves from people who know and are in positions to tell you that there are not those impediments and that that land does exist and that that land can be developed and that the only direction that Albuquerque can grow is not to and through Rio Rancho.

There have been false statements. There have been misleading statements made to people to get them to buy this land and that's what this case is about.

Ladies and gentlemen, I will have a brief opportunity to respond after the argum ents of the defense counsel, but just let me leave you with this one quote from Mr. Hollander, and this is on his training of the salesmen, and this is what this case is about.

Remember the reference to the Green Bay Packers? Now let's talk about C&A Realty. These people who come to our party as versus you against the Green Bay Packers, we serve them with an organized offense against a disorganized defense. We could kill 'em. We could walk all over them and we do -- and we do.

Don't let these defendants walk all over you. Don't let these defendants present you with such an organized defense that you don't question it closely, that you don't look for those smokescreens and that you don't start questioning why 45,000 people bought this land and why 77,000 lots have been sold and only 1800 have been built on, because they were bought as a financial investment by people who didn't want to build on them. They wanted to resell them at a profit. They couldn't then and they couldn't now and they won't be able to in the future.

THE COURT: We will adjourn until tomorrow morning at 10:00.

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(Adjourned to Tuesday, January 18, 1977, at 10:00 a.m.)

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

January 18, 1977
10:25 A.M.

Trial Resumed

(In open court - jury present)

THE COURT: Good morning.

You may proceed.

MR. ARKIN: Good morning, your Honor.

Ladies and gentlemen of the jury, Ms. Hynes, prosecuting staff, my friends:

This is a criminal case, which is something that you didn't hear very much about yesterday.

This is a case where the question is whether my client, Howard Friedman, and the others set about fifteen years ago to create a crime, to create a criminal swindle, set out throughout fifteen years to execute this crime.

The question is whether their business endeavor, what they were doing, the building of Rio Rancho, its very existence now, is a crime.

The question is whether -- this is something for you to keep in mind very carefully -- beyond any reasonable doubt, from all certainty, if you will, that these people, whatever they did was a crime beyond any reasonable doubt.

This trial went on for ten weeks. We all couldn't talk, but we all sat together and listened to a lot of evidence, computer calculations about acreage and you heard a little bit about a multi-listing market in Albuquerque.

You heard a lot of things which you have to evaluate. None of it I say to you sounds like crime. None of it shows that Rio Rancho and what these people did was conceived and performed as crime.

What we are asking from you, and what we are entitled to and what this whole system is about, is a fair and objective consideration of the facts on the evidence.

What we want from you is what you would give to your relatives, friends, your neighbors and fellow citizens, which is the kind of consideration of this very serious event which you would want them to have if they were sitting like Howard Friedman and the others in the dark accused of a serious felony. We want no more than that.

It is a great responsibility you have because we have a system in this country, unlike many others, we interpose our fellow citizens between an accused and the prosecution. The prosecution does not make the decisions. That would be oppressiveness, that would be arbitrariness, you all know that.

You have a certain function and you hear a lot about it on television and you hear a lot about it in school and I practice in that vineyard, I have never been a juror, but I cannot but believe that you feel it; that it is that kind of responsibility if you want to vindicate it for a fellow citizen who deserves that.

You have a function which is to determine facts. His Honor will tell you about the law.

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Yesterday throughout an entire three-hour summation you heard talk about the northeast, growth to the northwest, and people who bought and sold and that kind of thing. Notonce did Ms. Hynes mention to you the kinds of burdens which the government, which the prosecution has in this kind of a case, which is not 50-50, decide whether or not you like North Albuquerque Acres, whether beyond any reasonable doubt, as his Honor will describe that to you and define it to you, beyond any reasonable doubt, a very high burden of proof, as high as we can have it in our system, that these pepole are criminals. That is the burden which the government has and never shifts and that's what this case is about. You didn't hear about that yesterday at all.

You didn't hear about something else. Again you heard in school, from books, on television about something called the presumption of innocence. I say that to you because it has a special poignancy in this case.

People, when they are charged, are not guilty of anythinb by any definition. An indictment means nothing. It's not even smoke. It brings us into court and there is a presumption of innocence.

I say it has a special poignancy in this case because presumption of innocence means you look at it.

You look at the case, you look at the person and there is a presumption which we have fashioned over the centuries in this country that you don't just take the bad. There is a presumption of what people do and what people say, a presumption of innocence.

Here the whole picture wasn't given to you by the prosecution. It came out in part through our case and through cross examination. What you got was a pimple, a wart. You did not get from the prosecution the whole person and the whole case.

There was a studious, a concentrated, intense effort to avoid the good focus on some of the bad, culling out the bad, and going through the whole haystack and trying to find something which was bad and not very successfully at that.

It's pretty hard when you sit for ten weeks and you have an indictment to wash from your minds that there must be something there or we wouldn't be here, but you must do that. You must look just at the evidence.

It is very difficult not to think, as I said just a moment ago, that where there is some smoke, where somebody is saying, "Hey, they did something wrong," that there is nothing wrong. Saying it is not it, an indictment is merely a piece of paper and it is only the evidence which

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counts and your common sense and what his Honor will tell you.

Don't compromise your convictions, don't compromise your feelings just because it went on for ten weeks, don't believe there must be something to it. That because you had two teams of lawyers who were out here in this arena tilting with each other that you have got to give something to one team and something to another team. That's not what it is about.

In our system everybody loses if people are wrongly convicted. That includes the prosecution. They lose, too, if people are wrongly convicted.

(Continued on next page.)

I told you when I opened two and a half months ago that this was a cruel case, it was an irrational one; it is one which is simply not fair, because, as I said, what this case amounts to is the picking out of a course of conduct of 15 years a snippet here, a snippet here, a half quote, something out of context, a couple of people out of 45,000 and out of that attempting to construct a picture, an image of evil, of crime which does not exist.

The prosecution's case, the best way I think I can describe it, is very much like, if the prosecution had their way, what took place many, many years ago before we had courts and judges of the kind we have today, which is if you had an accused, what you did is you threw him into a lake, an icy, cold, bitter cold lake, and if the accused drowned then he was innocent and you prayed for his soul but he was dead; if he swam, then he was guilty and he was punished.

What is taking place here?

These people swam, they built a community for 15 years, they are swimming stronger today and that is why we are here. That's the kind of prosecution this is. We didn't die; trying to kill them now.

The prosecution would have you believe that this case is about some remote land in some God forsaken place, some desert land which is worthless and that everything which these people have done in 15 years is a false impression. That's what the indictment says.

You judge the integrity of this indictment and of this prosecution by its allegation that Rio Rancho is a false impression, which appears right in the indictment or, as Ms. Hynes called it when she opened, a showcase. That very charge, I say, shows a distinct lack of integrity.

We didn't have to prove anything. We could have sat back, let them sustain what is an enormous burden of proof which they have to before they can condemn these men and their companies. We didn't. You heard us cross examine throughout the government case, you heard our witnesses. Let me say something in that connection.

Ms. Hynes several times said to you why didn't they bring in Mr. Walsh, Mr. Sommerholder?

We don't have any burden. The burden is on the government to prove crime, crime beyond a reasonable doubt, and that they have not done.

Remember Sid Hollander, who turns out, in Ms. Hynes' summation, to be her star witness, the missing Sid Hollander, the tape?

I will tell you why he wasn't here. He wasn't here because Ms. Hynes did not want us to cross examine him.

Remember what happened to Ms. Hynes' witnesses when they got on the stand and they were cross examined? You got a little bit more of the story. It became more complete, more open, more truthful.

Cross examination in this case revealed immense areas which you would not otherwise have heard about and other things which you are telling. Let me mention a few things which on cross examination you learned you would not havelearned but for our questions.

What did you first learn, for example, about Miss Bonavisa, one of the alleged victims?

She comes in and she says, "I was taken," or whatever she says, and we learned that, on cross examination we learned that she was going to be able to sell her property at a 50 per cent profit. She had a deal and that deal was destroyed by the bringing of this very indictment. We learned that on cross that she was going to make a profit and the government indictment stopped that.

What did you learn about George Carruthers, who sat on this stand and he talked about how Albuquerque could hold two million people?

On cross examination you learned, sure, it could hold two million people if you increased density three times or two times what it has been historically, if you change an entire trend of a city over many, many years, and you learned on cross examination that he has been trying for 15 years and been totally unsuccessful, and what he was saying was, "My wish is that we could build Albuquerque differently than it has been built, is being built and will be built."

You learned on cross that side of it. You learned what he had to say just didn't wash.

And that prize witness, Mr. Avellanet, came in here and said there were 42 square miles of developable land in the northeast, and on cross examination he couldn't find it. We gave him a ruler, we gave him a map and he couldn't find it.

I might point out to you later we learned that it wasn't there.

I ask you also, when you think about this case and this case's credibility, whether it is a cruel case, an irrational case, you think about the believability and the credibility of the particular witnesses selected by the government, carefully selected and culled and brought here to testify to you.

Think, for example, what Mrs. Henry, who was the second witness -- do you remember her -- the first thing she said when she got on the stand was how dissatisfied she was when she visited Rio Rancho.

She said, "Terrible. I went out there, I bought it and I was terribly disappointed."

On cross examination what did we learn? She was so disappointed that she took the money which her son owned mowing lawns and she encouraged him to buy land in Rio Rancho after she said she was dissatisfied. How credible?

And about Mrs. Henry, remember the crumpled piece of paper which we found after lunch that day? She threw it away during the luncheon recess because on it she had written a note and the note said she couldn't remember particular dinner parties. She was worried, I suppose, that her litany of exactly what took place at the dinner party might be impeached by the note, so she put it into a garbage can, and there it is. That was a note to the prosecution and that was a witness asked by the prosecution for you to give some belief and credibility to.

And Mrs. James, do you remember her? She was a lady who was fired by the company for computer dishonesty.

When she gets on the stand she says while she is working for the company dealing with its customers, she says that, in effect, if you take her calculations, there were 170,000 complaints in one year to the company, which means if you take the total company customers, four complaints per customer.

That testimony was inherently a lie, inherently a lie and adduced here by the prosecution on direct examination; a lie.

And this is a case -- I can't emphasize enough -- where Howard Friedman, Daniel Friedman, Henry Hoffman, Chester Carity's freedom is at stake. The issues here are difficult. It is not a question of do you like Albuquerque, how many acres do you have; it's a question of life, death, freedom. Put someone on the stand like that? Out and out inherent liar.

Mr. Seder, do you remember him? He got on the stand and he cited his litany of he heard certain things at a dinner party and he read a script just that very day which is introduced in evidence, I believe it was 314, and Mr. Seder said, "Well, I heard the speaker say to me I could double my money and that script was exactly what I heard."

Do you remember him?

Then I asked him, taking the script, find in the script where it says that.

And he flipped through it and he looked at it and do you know what he came up with? He couldn't find it because it wasn't there, because the script did not say you could double your money, because he came in here primed, rehearsed, prepared, and he lied in a criminal case.

Let me go back to Rio Rancho, the so-called false impression, a mirage.

I say we have proven it's everything which customers were told it was. It's not remote. You look on the map up there. It is as close to Albuquerque as can be, just a few minutes from Albuquerque. It is not a piece of desert land or swampland or underwater; it is there, it is near the city and it is beautiful. You have seen the pictures of it.

There is not one person, either, who was brought in here who fairly could be said not to have known exactly what it is they were buying, knew exactly how much, exactly where it was in relation to Albuquerque, exactly where it was in relation to the developing area of Rio Rancho.

All of them, for example, of the ones who went out there, who was most of the people, went up to the famous tramway and could look out and as you heard time and time again they could see Rio Rancho, they could see Albuquerque, they could see the relationship between the two. They took buses from the airport to Rio Rancho. Everybody saw it. No mirage; it's there.

And would people who are criminals, swindlers, devote 15 years of their life to developing and selling land?

And each year, rather than putting up a show village, showcase, say the first year you put up 20 buildings and leave it or the second year you put up 25 buildings and leave it, every year which you have had here is more development at an ever increasing rate. Exponential, to use that word Mr. Pierce uses; it is increasing like the bottom of a triangle every year. Every year more money, more millions of dollars. Hardly people who don't have good faith, hardly people who beyond any reasonable doubt set out to commit a crime, hardly people who are swindlers.

You didn't hear a thing about the community, other than Ms. Hynes saying it has nothing to do with this case. You didn't hear real talk about it, and that's because it is not a false impression and that's because that is good and that's because when you think of this case overall -- aren't these people entitled to some credit for having built this community and continuing to sustain it? Aren't they entitled to some consideration in this kind of case for what they have done?

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Not if you listen to Ms. Hynes. The case is not about that, says she.

Well, what were they selling? They were selling what it was about. They were selling Rio Rancho, they were selling a developing community, a way of life and people were told about the community and they were shown pictures of it.

What were they selling if not that? And to wave your hand and to throw it away, don't consider it in the context of a criminal case?

Anything misleading in the prosecution? Think about that one. A place which has 2,000 dwellings, it has doubled its population in four years, whether it is population of homes, according to Al Pierce five times the population in six years, banks, industrial parks on land donated by swindlers, criminals; motels, a sheriff's station, a fire department underwritten by the company, an office building with a national administrative headquarters, by the way.

What they did was they move their administrative headquarters with three hundred employees out to the swindle.

Gas stations, one of the greatest sewage plant in New Mexico.

They didn't have to make it the best. Why do something well if what you want to do is to wiggle around and be a cheat? You do it well because you intend to stay there and be there and build a community. That's why you do it well, otherwise there is no reason.

You think about this in the context of a criminal case. How do you interpret it?

Churches, four of them now, on land donated by the company. Swindlers don't do that. A Mother House of Felician Sisters. They came there within the last year, even after all this trouble. It showed their faith in these people.

Community centers, again, sustained year after year by these individuals.

Ms. Hynes brought out through Grover Nash's testimony, this little bit. She said, "Well, Mr. Nash, don't you realize that they have no obligation to continue to sustain these community centers after any one year," and they quoted one year's property report or offering statement where it says that, that they are doing it this year, they don't have a legal obligation to do it next year.

What turns out on cross examination is that has been going back since Day 1. They have no legal obligation, but each year they say it, each year they do it.

If they were swindlers they could have walked away on that one; no legal obligation. What swindler does more than he has to do legally?

And think, also, you saw some of the people here. There are 7,000 people who live there in the fastest growing city in New Mexico, a community, I should say. Were they actors in some kind of phony or fraudulent scheme? Were they people, you know, who they hired from Central Casting? They went out and got 7,000 people twenty-four hours a day to come and live their lives here and every year they get more. Are they phony? That is 7,000 people. That is a large community and it is growing larger every day.

Think about what is there. Don't they get any benefit or consideration for that? Just forget it.

And there is something else. This property was sold to people in a way which I say objectively was strictly in accordance with the law and was fair and which was designed to give these people, people who buy, a great deal more information than you get when you buy other things, be it in department stores, supermarkets or over television, a great deal of information.

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There may have been, as you heard, an occasional, you know, offbeat salesman who was too zealous. That is not what this case is about. There are large companies. There are bound to be some aberrations once in a while. But there is nobody who got on the stand here and nobody in this company sold to, really, in the way they sold to most everybody 99-9/10 percent, who didn't know exactly what it is that they got, what they bargained for.

Keep in mind, these people knew what they were getting, intelligent people, and they signed a contract and they saw it, and they were shown it.

And the people who you were dealing with here, they are not stupid, they are not ignorant. They are pretty savvy. They can all read and write and make decisions, much as the prosecution would like to lead you to believe they cannot.

Miss DeWitt managed other people's money, makes $50,000 a year, invested in real estate syndicates.

Mr. Finnen, who is a policeman.

Mr. Switt was a horse judge or a judge of horse flesh. His wife went to school.

Mr. Gusowsky, a public accountant, businessman.

Mr. Sporzynski, chemical engineer, his wife

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being a psychiatrist.

Mr. Gray, who is an airline pilot.

Mr. Reyes-Guerra, a dental surgeon.

You had in our case Mr. Nash, who is a professor of Political Science at the University of Maryland.

Hardly people who are once to take advantage of. They were intelligent, smart, savvy people. They knew what they were getting.

One other offensive thing about this case is somehow or other the government seems to be saying, "We know what is best for John Citizen, and we have made a determination here it is just a bad idea to own a piece of land at Rio Rancho, it is a bad idea," so they bring a criminal case.

The prosecution here, I say, has no right to say these people could not, if they wanted to buy land, did not have the right to make their own decisions or the capacity. It is no crime to sell something to somebody when they knew what they are getting, as these people did and every witness did.

Let us look at the contract.

You all heard jokes about swindlers who sell things with fine print. What they do is hide the clause

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where they get some kind of clever lawyer where they get them to put a little thing in unreadable language or print on the bottom of some contract.

Look at this. Take one of these in the jury room with you. It is two pages and simple as it possibly can be. It is clear, it is precise. How much a person pays, at what rate, at what interest and what they are getting is set out right there, and the refund guarantee, which I will get to in a moment.

In big black bold letters on the front page of this two-page agreement and the option to void if you don't receive the property reports on the first page of this agreement spelled out simply, concisely, something a swindler does not do if you want to obfuscate and cheat and mislead.

It is remarkable that some of the people who came here to testify for the prosecution insisted that they never took the time to read a two-page document, that they never took the time, after they signed it, to see what they were signing, yet they all considered it a very serious venture. Not to read two pages? I say it is not just remarkable, it is not believable.

Now, the six month cancellation privilege, which is set out in big bold letters, in which, as you have heard, was reiterated from the podium, appeared in the film, appeared in the brochures, stressed continually, this six month cancellation privilege, which was that if you go out there and you look at it and for any reason whatever you don't like it, you get every penny refunded, I say to you, would somebody who is a swindler, a criminal, did not have a good faith belief in the worth of Rio Rancho, would he set up a system whereby somebody had a full six months to see precisely what it is he got and to change his mind and get his money back, no quibbles, no questions?

That wouldn't happen.

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Yesterday do you recall Ms. Hynes made a great deal of this "time is of the essence." You have got to sell them right there. You have got to close them right there. Any more than ten minutes and you are not a good salesman.

Well, if time is of the essence and that is what this was all about and ten minutes was some criminal scheme, ten minutes, and then what you do is you give somebody six months to change their mind. It's nonsense.

This was not impulse. The six months was just so people would have time to see what it is they were buying and to change their mind if they wanted to, and some did.

What do they do? You didn't hear a word about that in Ms. Hynes' summation yesterday, not a word about this extraordinary powerful evidence that these people could not fake. Aren't they entitled to some consideration on that? Do you have to just avoid that, exclude it from your considerations? If you listen to Ms. Hynes you do.

I ask you what swindler would tell somebody, "Look at it, stand on it, smell it, see it and all around it." None.

So what did they do? The prosecution takes its privilege, they don't mention it in the summation, but they take it, the indictment and they put it under their own special sugar bowl, their own napkin. They say that this privilege was given in order to induce persons to purchase land they had never seen. That is the charge.

The whole point of this is to induce people to purchase land they had never seen. Then the facts come out. The company not only gave them their rights, they didn't discourage people from going out there, they didn't say, "Don't go, it's all right, buddy, don't worry about it."

They had a vigorous, a full, a complete program to encourage people to go out there.

Every dinner meeting they were told about that. Things were sent through the mail, tours were organized and subsidized in large part. If people went out there they got a vacation travel allowance towards the purchase of their land or a home.

You know, even on the very carefully pruned and questionnaired and vetted government witnesses who were brought in here, which you can be sure were selected for purposes of the prosecution, all of these or most all of them, maybe a couple didn't, but [illegible] all of them saw their property, stood upon it and signed "Satisfied" after seeing it and the surroundings in relation to Albuquerque. Nobody found any arrowheads, either.

What do they do when they are faced with this very powerful evidence of good faith, very powerful evidence which suggests, I think, to any ordinary mortal no crime, another little bit of chicanery, I will call it, a little slight of the hand, a little quicksand dancing here, they say that it is also, it charges this in the indictment, they say that the purpose of the tours was to discourage people from exercising this right which they gave them and, by the way, which we didn't have to give them. That is what they said.

What was the evidence? The evidence was that people went out there, some cancelled, some didn't. Some bought some more land. Everybody agreed they were treated decently and well.

Something else you heard complained about here. What were they supposed to do, take them out there and whip them and give them bad food and poor accommodations and not pay any attention to them? It's a crime to treat your customers decently, nicely, better to be honest? But what you do is be rude, kick them around, yell at them, scheme at them, that is okay. Ms. Hynes would like that.

It's a little bit like this fellow in another country who is prosecuted for not having a passport, an internal passport. The reason he didn't have the internal passport was because the Russian authorities took it away from him. It's a Catch 22. You can't win.

Let's talk about the tours. You heard some talk about control. These people were controlled?

They were too intelligent. Little bits and pieces came in. They didn't let them rent cars and then you learned on cross examination not only did they let them rent cars, but they had them at the discount rate at the Panorama Inn. They didn't stay at the Panorama Inn, they stayed downtown. You heard that from Nick Masone and in statistics from Larry Perlmutter.

287 out of 378 tours stayed at the Panorama Inn. Ten more were split. 81 stayed downtown and the reason for that was because the Panorama Inn could not accommodate them. Everybody agreed to that.

Let me just sum up on the tours. You heard about control very eloquently from the stand. One of the witnesses said, I wasn't a prisoner. He wasn't. It is a singular understatement.

Let's talk about the contract a bit more.

It's voidable unless you get the property report, the offering statement. Read it and you will see it. People had 48 hours to change their minds, void it absolutely unless they got these things.

You heard yesterday Ms. Hynes say these were confusing documents; that no person could understand them; she couldn't understand them.

Well, these documents, as you heard from the evidence, were created at the instance of various governmental agencies. These documents contain in them what was required by governmental agencies. The governmental agencies obviously knew and required that each customer get a copy of these reports.

Unintelligible? Again it's Catch 22. They do what the government says. As one witness said, they put the pros and the cons within these documents, if there are any cons about Rio Rancho, negatives, that is, and I don't think there are, and give them to the people.

They make sure they sign receipts for it. They make sure they initial contracts. Ms. Hynes says that is a part of the crime is these were confusing documents. The government tells you to do it, you do it, it is confusing.

Mind you, there was no contract processed unless it had been initialed in that way.

It was the company policy absolutely that everybody got one of these and could take it away with them if they wanted. You heard that from various witnesses, Perlmutter, Zaknich, Mandel, Bondy.

The company did more than merely write a simple, straightforward, clear contract giving the people the right to cancel, a right to see what they bought. They did more than that.

To insure fairness and honesty in dealing with their customers, they used only licensed real estate salesmen, licensed brokers, all of them had to take examinations. They made each salesman sign a contract promising to represent the product honestly.

Why do it? If this is some kind of a scheme with cooks, you don't do that. It is not necessary. They did it.

They did something else, too. They had account representatives which were there to answer the problems or the questions which any customer might have and they had two toll-free lines to Albuquerque.

All of you know that when somebody cheats or swindles or commits a crime, what do they want to do with somebody whom they have taken advantage of? They want to get away from him. They don't want to answer the telephone. They don't want to open the door. They want to split.

What did these people do? Two toll-free lines and every morning after a sale is made, they have somebody call up and find out what the customer had to say. This is not like North Albuquerque Acres you heard about where people just sold and split and did nothing for their customers. Even that land today is worth a lot of money. These people are there and developing.

You know what, take this one, too, and Ms. Hynes tries to turn that around, in a criminal case she tries to take a piece of good and make it evil. She says, the purpose of these calls was to head off buyers remorse.

What did Mr. Lederman testify to? Mr. Lederman being the sales manager, quoting from page 1900, my questions:

"Q You wanted to make sure everything was kosher?

"A That's correct.

"Q And also, I take it, to make sure that each customer had gotten the appropriate reports, the HUD report and the offering statement, am I right?

"A Yes.

Why would a company do this if they were criminals or crooks? They did it for the reason Mr. Lederman said. They tried to stand that one up on its head, too.

There is something else about the good faith of my clients, about their belief in this property, which goes right to the guts of this case, and you didn't hear a word about it from the prosecution. You heard about it on our cross examination and you heard about it in our openings and you heard about it from our witnesses. You didn't hear about it from Ms. Hynes, that is that no literature, no brochure, no film, which by the way contained virtually all the representations made by this company, were ever used until they had been submitted, reviewed and until they got permission to use it. We got that out for you.

Would people who are committing a crime, a swindle in their minds say that they didn't have good faith when for fifteen years they submitted everything they did to a state agency like the New York Department of State where everything was scrutinized?

What was in their minds? That for fifteen years they could get away with doing something wrong?

You know these state agencies, they didn't just sit there. You heard evidence they went out to the property and visited it and inspected it.

I refer you to the testimony of Mr. Zaknich, Mr. Mandel and Mr. Perlmutter, Mr. Monaco and Mr. Bondy. Overwhelming that is what took place.

Not only that, not just did they review the literature, not just did they inspect the property, they did more.

You heard that every dinner party, every dinner party had to be announced to the state beforehand. They gave them a list and there were unannounced visits by state inspectors to these various dinner parties and you heard testimony that the inspectors never questioned what went on there. These were New York State Department inspectors.

Even the scripts, as Mr. Bondy said, were a matter of public record. Those dinner scripts, they too reviewed.

Now, you heard from Ms. Hynes about the claimed high pressured selling techniques. This is something you heard a lot about in the prosecution case and a little bit yesterday.

Somehow it is wrong for people to create a sense of enthusiasm and happiness and positiveness about selling their product. Somehow that is an aspect of a crime, of a scheme to swindle.

Well, what were they going to do, create a mortuary feeling, gloom, doom? It's ugly. Come on, people, don't go out there, don't buy our product. Let me tell you why you should be sad. You shouldn't eat, you will gain weight.

You know. What should they do? Obviously they were enthusiastic, they were selling.

You know, look at TV, look at whatever else is sold in this country, you see cars, you know, with big cats draped across them. You think they put these big cats there because you get one every time you buy a car or a pretty girl in the driver's seat, you don't get that either. It is to make people feel positive about a product. It is so nonsensical to criticize these people for that.

As Reverend Byers testified from the stand, there was less pressure at these dinner parties than there was when he went to buy a car. That is where it is at.

Speaking about cats, tigers and pussycats, you heard a lot of talk yesterday about this pep talk, this football pep talk, which Mr. Hollander -- Mr. Hollander's tape -- Mr. Hollander is not here for us to cross examine, you heard a lot about that, and somehow Ms. Hynes sought to convey to you that that was a basic company philosophy. A little bit of deception there.

You can understand why she didn't bring him here to court when I read to you what I am going to. Yesterday she called the training manual the Bible, the Bible for training salesmen. That is what the ocmpany policy was. The Bible for the company.

This is what the Bible says about selling people, and keep in mind the language yesterday you heard from that pep talk, that football pep talk of this fellow. Remember we are the organized offense with a disorganized defense, we are going to conquer them.

This is what the Bible says, and I am quoting from CW which is a part of the Bible we put in evidence after a little piece was put in evidence by the prosecution.

"As 'professionals', we must drop the idea of 'conflict' between the prospect and salesman where the salesman in the 'winner' if the prospect buys, and the prospect 'wins' if he doesn't buy. The days of 'techniques' or 'tricks' are gone -- and anyone that 'closes' in this fashion, is living in the past. If the sales interview is based on facts, and offers a practical solution to a problem,and if what has been presented by the salesman is accepted - there is nothing left to do except to write the contract and have it signed."

A few pages later on in the same exhibit:

"By asking openly for the order, has an advantage over tricky 'closing techniques.' It is honest and straightforward. For a salesman to 'keep his contract hidden' to ask the customer for his 'John Hancock,' or to avoid asking for his 'signature', might have been all right years ago, but those days have passed."

Hollander's tape is an infidel. We proved what the Bible was, what took place in this case.

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Something more: Hollander not here in this case was worse than being an infidel. He was a ghost of being an infidel. They are trying to convict us on non-cross examinable testimony, an aberrant tape found on somebody's shelf years later and there is no evidence that any one of these people heard, saw or knew about it. They knew about the bible.

In terms of high pressure statistics or high pressure, rather, the statistics belie that. Mr. Mandel said a small percentage of those solicited came to the dinner parties; only a small percentage of those who came bought.

You heard yesterday when Ms. Hynes read to you from certain exhibits showing salesmen's performances. She said, aw, the tigers have a 40 per cent closing rate.

She quoted from an exhibit, Exhibit 360, she quoted some other high closing rates, but what she didn't do was in the very same exhibits tell you that the closing rates on the average were about 14 per cent. That's in Exhibit 360. 1.8 per cent, Exhibit 358. 8 per cent, Exhibit 362.

Obviously, what there were in this case were a lot more kitty cats than salesmen than big mean tigers or big bad old pussy cats. It is just plain nonsense.

You know something, a little side light, the guy who was cited here as being the tiger, if you look on this Exhibit 360, Luther Schlesser, 40 per cent stands out like a sore thumb. It does. It sure does, he was fired by the company for being dishonest.

The company got rid of the only guy Ms. Hynes can cite to you as a tiger. They cut his tail off and put some real stripes on him, kicked out. Mr. Zaknich said that.

You know something about statistics, it's very interesting. Where were the greatest rates of success? Over half the people who went on the fly and buy program, called before unsuccessful, they bought 53 per cent, they went out there and saw what it was and stood upon it and they bought it. That says something for that property. People not buying until they see it and touch it. That's a statistic which you can keep in mind.

Something else which is very telling in this case about my clients and the way they sold. Who were the best salesmen? Not the imaginary ghost tigers and pussy cats or whatever they were. They were other customers who had been to the property, who had seen it and who were invited to dinner parties, who brought their friends in and sold it to their friends. Others came to the dinner parties and were not paid to come, were not told what to say, they had seen it and they talked and they created enthusiasm.

Let me ask you: Isn't that bizarre, really ridiculous for the government, the prosecution, to say that somebody swindled somebody and what you do is you take in people, "evict them," I put quotes around that, who saw exactly how they were victimized and bring them to the next dinner party so they can tell this person.

If you cheat somebody, you forget about them. You don't give them as a reference. You do not give somebody you have beat over the head as a reference or someone you kicked, cheated as a reference and that's what they did. Their greatest references were their customers.

You know something else, speaking about good faith and what these people had in mind, an issue confronting you, were they criminals? Let's look how they acted.

First of all, did you hear Ms. Hynes say about one piece of evidence in this case that these people did not honestly fulfill every contractual obligation they had. Every line of every contract. Every obligation, every representation fulfilled.

There is nobody who came in here and said we didn't get what we bargained for.

You think about that. Does a swindler

scrupulously go along with a contract and abide by it for 15 years? I know the answer to that.

These people did more. They went beyond what they had to do in their contracts to benefit people. They bent over backwards. They were generous.

Why would a swindler, a criminal, be generous? You signed the contract, lady, you signed the contract, that's the end of it. They didn't.

What did they do? They gave people cut-backs. They let them reduce their payments if they ran into some economic problems. They gave them some moratoriums, that's to say they let them not pay for a while even though they didn't have to if they had problems. They gave them -- the contract provided for one 60-day moratorium and you heard about people who got many more than that. That's decency, that's good faith. They gave refunds when they didn't have to to people who ran into family problems and illnesses.

They didn't stick to the letter of the contract here. They went backwards to help their customers.

Let me talk to you a bit about the customers that came here and were called as witnesses. It was very interesting. Do they represent the 42,000 or 40 some odd thousand purchasers at Rio Rancho? I say they do not.

There were a carefully culled, pruned, questionnaired, put together group of 23 people. The cream of the crop. People who had the worst experiences and the biggest gripes. That stands to reason if you are trying to prove a case that doesn't exist.

But these people, not one of them really had anything to say which was I think probative on the basic issue in this case of whether my clients were criminals. It's very funny too when they called the witnesses, you know, they would have the husband and wife, the wives who went to these dinner parties as units. They seemed to have an unerring ability to call the spouse who didn't like it, like Mr. Fox, who said in response to questions on cross examination at 2728:

"I mean mainly, she," referring to his wife, "influenced me the same way as the salesman. She says, mama is working and mama is going to pay for it but I should have let mama walk away from it but I didn't."

Well, you didn't see mama. There were some statistics, too.

Take Government Exhibit 887, it's a computer printout of all the purchasers of land as of April 30, 1975. Well, you heard here from Ms. Hynes that somehow what the company was trying to do was sell them more and more land, load people up.

Of the purchasers of the company, customers, 84 per cent owned one or two lots. Over half, 56 per cent only owned one lot. Hardly investors. These were people who were thinking about something else which I will talk to you about in a minute.

It is very interesting if you add up all the people who own six or more lots at Rio Rancho, you end up getting less than two and a half per cent of the total customers. Compare this figure in terms of whether this case was prosecuted in an honest way and not a deceptive way. 30 per cent of the customers who took the stand for the government owned six or more lots. 30 per cent sample when only two and a half of the customers of the company really are that way.

Most of these people really only became unhappy were the people who Ms. Hynes called or felt cheated or whatever. I say only after that idea was put in their head by this case or by the investigation leading to it.

You heard Mr. Mols on cross, he said: He never complained to AMREP during '67 through 1974. Reading from page 3753 and 4, he says:

"Q You never claimed you had been defrauded?

"A I told them," referring to friends of his, "it was the best company in America."

Then the clincher:

"Q In fact, you never really complained about being cheated until you were contacted by the U.S. Attorney's office?

"A No, before I came to live over there."

Other witnesses the same thing. Mrs. Henry who testified she told the company she was upset over publicity hoping it would all work out for her sake and for their sake and now she appears here.

Mohammed the same thing.

The Hampes, they didn't get upset until they got a questionnaire. They wrote on the bottom of the questionnaire: Dear Sir: We would like to know the reason for this questionnaire and listen to this, or if anything is wrong with the land for sale or the company.

In other words, these people who came in here, they were made unhappy and insecure by a government questionnaire. Just think about yourself as any of us would. You get in the mail an official document from the government, a prosecutor no less, not even some benevolent agency like say -- I can't name a benevolent agency right now -- like the State Department, you get one from them, what do you think? You are going to get pretty upset.

Mr. Brindle the same thing. Whe he read about it in the newspapers, then he became concerned and he wrote the U.S. Attorney.

Mr. Finnerty, the same thing.

Mr. Madden, very sad, he stopped paying on his contract after he heard about the case.

Mr. Gray, the pilot, the same thing, he stopped making payments, lost his money. Why? Even though the company gave him eight months, eight months' grace. Why? Because he heard about the case.

Miss Bonavisa's whole deal fell through, she was going to sell it in good faith to a friend. This case fixed that deal.

One of the saddest of all is Mr. Kaufman, he was that man, the 18 year old fellow who came in here and said he had the land. That it was his original intention to keep it and give it to his daughter as something she would have and he was stampeded into selling it at the auction because he heard about the case.

He was perfectly happy. He wanted to give it to his daughter until he heard about the case. Is that fair?

By the way, that land Mr. Kaufman sold, he sold, he got $500 and if you look at the contracts and the exhibits you will find that he was chated by the auction run by Mr. Olguin, they paid him what he thought the price was for half an acre for a full acre. He ended up giving them a full acre. They even cheated him. Who caused him to be cheated?

These people who were brought here had to have been influenced by this very case. It is not fair that their unhappiness engendered by the very same prosecution which seeks to convict these people of crime should be considered by you.

You know something else, this auction, you heard a little bit about it and I will talk about it later on. The government is bringing the case, they stampeded people into an auction. They get more people to list their property, they are scared and worried, Uncle Sam is coming on in. Something must be wrong because the prosecution says so.

Then people were going to buy it, there were some very smart people who bought it like builders at Albuquerque. People who bought it get it lower because of the fear caused by this very case.

This government campaign, the prosecution campaign should not be allowed in your minds to influence how you appriase what Rio Rancho is about because you remember a lot of the people who came here and expressed unhappiness at least on direct examination, not before cross, they were products of all this publicity and this indictment. They were not victims, they were products.

Basically what the prosecution seems to suggest after all these months is not something which is easy to discern is that my clients committed a crime because there are two opinions for which they are responsible and these opinions beyond any reasonable doubt, says the prosecution, they didn't say it, but they have to say it, these two opinions are baseless, they are false, they are misleading.

Well, the government has a burden to prove beyond a reasonable doubt that not only are these opinions false, not only is it as a matter standing itself not worthwhile for these people or the customers to have bought land at Rio Rancho that it's not a good investment. They must also prove beyond a reasonable doubt that my clients did not honestly believe that it was worthwhile for people to own land at Rio Rancho. They must prove that in their minds they felt they knew it was not a good investment. I say they failed on two counts.

They failed because they did not prove it was not a good investment. They failed because they failed to prove that these people did not honestly believe it was.

The other opinion with which they quarrel is its growth to the northwest. There, again, I saw the government has the burden of proving beyond any reasonable doubt that Albuquerque was not growing to the northwest and that these people in issuing that opinion to others honestly did not believe it was growing to the northwest.

Beyond any reasonable doubt, they failed on two counts there.

Let me talk about good investments. I think what the government does here, they go to great lengths, to really mislead you. I think they are misleading you. I am going to give you an unfair impression. Keep in mind everybody who went to these dinner parties or who bought this land didn't just get a line given to them and plucked out of some prosecution exhibit, a one liner. They didn't have just an isolated quote or half quote in a script.

What they got when they went and the total presentation which consisted of the brochures, the offering statements, the property reports, the films and the podium speech, like "This is My Land," the brochure that you have heard so much about, and I ask you in your own deliberations, read those things, see the motion pictures.

You are talking here about ultimately impressions. It is simply not fair to take a little snippet or a little half quote and say, ha, you analyze this gramatically, there is an inference here from which you might say something was wrong. Look at the ultimate impression these people created.

(Continued on next page.)

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Look at what people could reasonably believe and what these believed.

Talk about investment. Take "This is My Land," the motion pictures, most of them were devoted to, really, if you call it investment, an alternative way of life, a place where you can live more healthfully, recreation, a place to retire.

It is something which is nice to own a piece of land; it is not like paper. It is not like something which -- like an old toy. There is a certain pride of ownership.

You heard that from some of the witnesses, like Reverend Byers.

They also had a theme of long term investment, long term investment, not short term, not make a quick profit; quite the contrary.

Something to consider when you think about this case is that of the purchasers called by the prosecution, 23 of them, 14 had considered moving to Rio Rancho. So 14, part of the impression they had when they went to these dinner parties and bought was, "It's a good place to live."

That is a part, substantial part of what motivated them.

And these were people that were selected out with great care obviously for the prosecution to give you a flavor. The flavor is more than one flavor, particularly on cross examination.

I say there is not one iota of evidence here, the government never adduced any evidence that any of the representations made in connection with good investment were false or knowingly false. There is no evidence here that Rio Rancho, in a sense, a fair sense, is not an absolute good investment.

You didn't hear, talking about burdens of proof and the prosecution has to go forward and other people have to prove things, they didn't bring in here an appraiser who looked at the land and said, "Aha, worthless, it's not worth nothing, it's a bad thing."

There is one man who came, a nice one, from FHA, another federal official.

What did he say?

He said, "Originally we didn't appraise out there at Rio Rancho, then we did, and we are now appraising lots in the developed area for 5400 bucks per lot, bucks per square foot, front foot."

And everybody who owns a lot at Rio Rancho in the undeveloped or developed -- undeveloped, rather, has a right to exchange into the developed area, and there you have an FHA appraiser saying $5400.

That $5400 value was created by these people out of land just like this (indicating), which is like, I'm sure you heard, land increases in value and worth as you develop it.

Let us talk about the representations.

There never were authorized any representations of quick profits or resale.

Really, what was transmitted to people was it is worthwhile to own land at Rio Rancho, and I say that's the ultimate impression and that is one with which you cannot quarrel.

Consistently the company forbade its salesmen to make resale or quick profit representations.

As Mr. Perlmutter said, quoting from 3424:

"Q Mr. Perlmutter, you know, do you not, that it is company policy never to represent or to have represented that there is a resale market for Rio Rancho land?

"A Yes, sir.

"Q That the company never allowed or permitted representation of people could make a quick profit on their land?

"A Not to my knowledge, no."

This is a man who is a high officer of the company, great responsibility, and that's, you know, speaking from the throne.

That's what the company policy was and that's what these people, if anything, were responsible for, to see to it that people were not told quick profit or resale, because land is not that way, it is not liquid.

You try to sell half of Manhattan, as densely populated as it is, you couldn't.

It is really not like stocks and bonds. It's good, it has its own advantages, as you heard time and time again from the stand, people whose basic family asset was land in a home that they owned and they made money on that, but it is not liquid and the company never told anybody it was.

Then in 1972, we have Government's Exhibit 1405. Let me read to you from there. That is all the directors, people who managed all these salesmen, Larry Perlmutter, again, and this is company policy. Quoting from parts of that.

"There are certain statement which are forbidden and if by chance any salesman should make such a statement, he should be terminated immediately," and salesmen were, by the way.

"These forbidden statements are," I will go to four and five, "This is a quick return on investment," forbidden, "We will resell your profit at any time," forbidden.

This is what the company was telling its people. What more could they do?

When you talk about good faith, when you talk about what their intentions were, when you talk about what they had in their head, they were telling people, don't do that, "because quick resale, quick profits are not to be equated with investment, what we are selling. Don't do that."

That's what they told their people.

Mr. Mandel:

"Q People were never told there was any ready resale market, did they?

"A They were not, sir.

"Q Or that they could make money overnight?

"A They were not."

You heard Will Lederman, another sales manager who got on here, who said, "Well, I have a fella say to me he wanted to make quick money, I said to him, oh, that's not for you, my friend."

That's what he said. That's what the company wanted him to say.

And here is a customer, Mr. Quinn, at 6605:

"A man at our table questioned the salesman if he bought land would he be able to make, resell it and make a percentage within a year or two or three, and he said, the salesman said no, I cannot promise that. We weren't ready to buy then, anyway.

"Q What happened with the man who made that request?

"A He got up and walked out.

"Q He said he was not interested?

"A He said he was not interested because he couldn't make a fast profit and the company let him go."

If they were selling fast profits, quick profits, which they were not and there is no proof they were, to the contrary overwhelmingly, that man would not have walked out.

And this was always company policy, always company policy, was embodied in its offering statement in 1969, Exhibit BF.

Let me read the whole quote, not just the part you got yesterday.

Everybody who bought, who would buy, was given this, and there it is in black and white, and to say they couldn't find it, as Ms. Hynes says, they couldn't find it, couldn't read it, it is nonsense. You buy a piece of land, you take it home, and on the third and fourth page, let me read it to you.

"Lots may also be purchased for speculative purposes, but such purchasers are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years, that a percentage of the purchase price paid is included therein for use in advertising and development, and that in trying to make a resale," the part not read to you, "and that in trying to make a resale, the purchasers may be competing with the company, which has thousands of lots to sell."

There it is, the reflection of the company policy from day one up to the present time.

It simply is not fair, it is not right for Ms. Hynes to attempt to define investment for you in very narrow terms could you sell it to the Multiple Listing Service in Albuquerque, ready resale.

It reminds you a little bit about the fellow who is -- I am talking about the prosecution -- who is advertising the sale of five-legged dogs and when questioned as to how a dog can have five legs, they say, " Well, if you define a tail as a leg, you got it."

Well, don't convict these people on somebody else's tails.

And the letters which the company sent out to its customers, it said the same thing, it is premature to resell, totally consistent with this, totally consistent.

You heard about Mr. Schliebe, Pastor Schliebe, whose documents are in evidence. He wrote in year 1, "What should I do?"

They said, "We are not in the business of reselling."

In the year 2 or 3 he sold it at a nice profit to Mrs. Linderman.

Yesterday and throughout the trial there was a great to-do about the price increases which took place over the years and somehow it was suggested these price increases were proof of some kind of sinister intent, because for 15 years year after year the price went up.

Well, first of all, let us analyze the evidence.

Any time there was going to be a price increase, it was announced.

Ms. Hynes says that was a sales hype or encouraging device.

It was also true; it was also true. So people who were contemplating buying won't be sand-bagged three weeks later by a price rise. Look at it that way.

If you look at it in the context of a criminal case, you sitting around the table as the 12 of you will, should you give everything a sinister meaning?

There is nothing these people -- they don't get up in the morning, they couldn't roll out of bed, they couldn't have breakfast, they couldn't kiss their wives without some biblical sin being charged to them.

They told people what they were going to do. And every price increase was submitted to the New York Department of State before it took place.

And something else about these price increases. You heard time and time again every customer who purchased andthen had prices go up later got the benefit of these price increases. It was not some phony device. If they wanted to trade in, whether it be on a condominium, as one witness did, or as Miss Davis did, turn in three and a half acres and get $11,000 credited to her ranchette, they could do it. It was really a hedge against inflation. They could use those lots at the appreciated price and get 1976, '5 or '4 prices. It didn't stay static, they got the benefit of it.

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Another point, too, which is that prices going up. All of you know that development costs, that inflation, salaries, overhead, it all goes up in a company. You can't help it. It is unfortunate for us all, whether it be school tuition or, you know, socks or shoes or food, it goes up.

How can you say it is a crime to increase prices? That is just a natural thing in this country.

I'm sure you will be instructed, too, that what the company paid for the property as compared to what it sold it for, that's not evidence of fraud.

Now, you heard some evidence about a brief period of time during which certain salesmen were saying that the land at Rio was almost sold out and when it sold out there may be a resale office.

What we ask for that is that it was not part of any authorized presentation to mention the potential resale office. There is no question about that.

The company was almost out of land at one time and that was true. The evidence is conclusive on that.

What happened for a period of time, there was -- they were almost sold out and so salesmen were honestly saying that. That is a fact. That is a factual

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statement.

And once the additional acreage was purchased, that is, the other 37,000 acres -- by the way, there is no crime, it is perfectly legal, it is perfectly okay, proper to buy additional land to develop and to sell, no crime in that.

Once that was done, the salesmen's statements about being almost sold out were stopped. You heard Lederman say that. That is what happened. Fact; fact, event, fact.

It is, I say to you -- I don't like to use harsh words, but I say it is insane for the government to contend here that beyond a reasonable doubt this land is not worthwhile to own and that these people could not have believed or entertained an honest opinion in respect to its worth.

Let us talk about some of the evidence which deals with that issue. As I said, and remind you again, good investment, however you may define it, should not, cannot be defined as a five legged dog. It is too narrow. You can't just look at resale immediately in Albuquerque for a couple of years with the multi-listing service.

Speaking about the multi-listing service.

So successful was this service in Albuquerque who probably put listings in drawers that you had one of the witnesses here, Miss Mellenbrook, I believe, who took a sign, this wooden sign, she sticks it in the dirt and a month later she sells her property. It is such a good such she takes it and gives it to a friend. A month later her friend sells her property, both for sizable profits.

Let me say to you that anything, whether it be listed with a realtor or not, if you put it in a drawer, you don't give it any energy or any effort, it is not going to be done.

But more to the point, talking about the future of Rio Rancho and whether people will buy it, the evidence is not that it was meant to be sold just to people who already live in Albuquerque. That is not the point of it.

You heard Ms. Hynes talk about that as some kind of statistic, fifty people or whatever.

Albuquerque, as it grows, is growing in large part because of people coming in, in migration. The 300,000 or more people expected in the next fifteen or twenty years is not all going to be by having babies or expanding families, it is going to be by people who are moving to different parts of the county to get away from some of the cold we have here. They will move out to the sunny southwest, and it is sunny and it is the southwest, it is a nicer place, an easier place to live, so you do have, as the evidence has shown, a vast migration factor there.

When these people come into Albuquerque, these are the people in large part who are going to buy Rio Rancho homes. And that's what that community is about.

Sure, there are going to be people who live in Albuquerque who will move out there and eventually as time goes on more and more. But it is not fair to limit your consideration to just a local market and a local listing service.

Let me talk to you a little bit about resales, because it is interesting just in this very case, the witnesses we have heard.

You heard Mr. Mols, a prosecution witness, he buys an acre in 1967 for 1760 bucks and four years later he doubles his money, he sells it to a friend for 3600. That is resale, one of their witnesses who they carefully selected, all the time they had.

Mrs. Bonavisa, she was going to make a fifty percent profit, again, selected by the government as a witness.

We brought Miss Mellenbrook in. She sells her commercial lot with a wooden sign for double what she paid for it, $7,000, making a [illegible]500 profit, and her friends the Gruetters also sell their land, and Miss Linderman, who came from Indiana, she bought land from Pastor Schleibe for $2250 which she had bought for $1395, and we learn from her that Pastor Schleibe sold other land at a profit.

Ms. Hynes picked out whom she considered to be the very best witness for her cause, and there are a significant percentage of those people who have had experience with resale. You can draw an inference from that.

The auction, something was made of that.

Well, you know, auctions, particularly in the climate that this auction took place, right around the indictment, it's a distress situation. You know, people smell trouble. And that's what it was about.

You know, it is very interesting that the lots which were bought at the auction, they were not bought by ordinary people, they were bought by the people who have extraordinary knowledge of what goes on in the Albuquerque area.

These were builders. These were people like Sunland or Villa who went in there and bought these lots in order to exchange them in.

You heard from Mr. Olguin. They exchanged them in and they got lots worth a lot more than they paid at that auction at those distress prices and they made money in profits on the lots they bought, and these were knowledgeable people.

Keep that in mind when you say beyond a reasonable doubt there is a bad investment, a terrible investment and that these people had that in their mind.

You know something else about the auction, which is that most of the lots were not sold there, and the reason is you did not have the evidence adduced or brought as to how much these people listed the lots at.

Some people who go to an auction and they sell a tea cup at X price which is high. I think you can infer from that that most of the people who did list, after they got these circulars, these solicitations to list, listed it at a sizable price.

Let me talk about the multi-listing service, which is a very poor competitor with a wooden sign.

First of all, there were twenty sales recorded between 1971 and 1973. That was the only time period we are talking about that had this evidence.

We didn't get the prices. The fair

inference from that is that they were at sizable profits.

We don't know whether the percentage of these resales was any greater or any lesser than other land listed with the multi-listing service. In other words, there is no standard for comparison.

Their percentage here may have been just as great as any other land in the area.

And when you think about the multi-listing service, sure people listed and relisted, we don't know how many the true count is but I will break it down. Say there was 600-some odd, some of which may be duplicate, but maybe exemplary were people like the Switts. He was a horse judge and his wife was a teacher. They listed their property for three times what they bought it for. They didn't sell it quickly.

Well, that is pretty understandable. They listed it at a very high price with a substantial profit with no terms, unlike the company, who gives people some time to pay it out.

You know, most important, multi-listing service does not mean that, you know, brokers go out and try to sell. You don't just put things in a drawer and sell it. That is not human nature. You have to make an effort. And there is no showing that these people did.

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Maybe two or three brokers dealt with the property and they made twenty sales.

Mr. Heinz, who had the vast bulk of these listings, 400 of the 600, he solicited the listing, charged people fifty bucks and did nothing.

Also there is no evidence, even speaking about, you know, Albuquerque, a very limited geographical area, no evidence about the hundreds of other realtors in that area who may have sold.

And the prosecution here, they have a burden. I said we can sit and do nothing. I think we have done more than enough.

A little aside,talking about the integrity of the government's case.

You heard this little set Darlene McCorkle gave when she sat on the stand. She said she was reading newspapers when she was looking for property and she saw every day ads "Desperate, must sell, desperate, must sell."

Well, there are other bases on which to judge McCorkle's credibility. Let me leave this with you. Mr. Olguin, the auction expert fellow, what did he say?

He said, we-l, he didn't hardly see any ads for Rio Rancho in the newspaper.

Well, talk about the integrity of government witnesses.

Some other factors which you should consider very powerful ones, indicators of the good faith of my clients, what was in their heads, what justified their belief in Rio Rancho and its worthiness.

Look where it is located in relation to Albuquerque. It is not remote, it is not barren. It is beautiful land near a large burgeoning metropolis. That it is, common sense, is enough, I say, to place in their brains good faith.

It also is no small point, Rio Rancho lies smack dab in the middle of an energy belt, the largest in this country, which has most of the worlds known uranium reserves, the free world, vast deposits of coal, thermal energy and there is a road planned right across Rio Rancho.

How can this not have an impact upon this land? It is going to have an impact and plenty.

And let me give you an example of good investment.

You heard about people who were able to buy lots at $10 down and $10 a month as a means, I say as a means of obtaining a single family home.

Let us take a case like Linderman, which I think is very revealing.

She buys a piece of land from Pastor Schleile, he makes a profit. She takes the land which she gets for $2250 at $100 down and $50 a month and she gets with that piece of land, which is paid for on these installments, a $3150 credit toward the purchase of a $35,000 home at Rio Rancho, a single family home and a nice place to live, and she gets in addition to that a $400 travel allowance because they wanted to encourage her to come down to relocate, as they did everybody.

The company did this. They brought people down, they gave these allowances, they encouraged them to come, to relocate, to see.

So Miss Linderman gets her $400 credit added to her $2250 and she is buying a house for $35,000.

You listen to what Jack Graham did, the president of Albuquerque Federal Savings & Loan Association.

He said, "We think enough to Rio Rancho, we are giving 90 or 95 percent mortgages," which means and the result is this land which the government says is worthless, is not a good investment, enables a family to get the full down payment on a $35,000 single family home for $100 and $50 a month which you could have bought a little earlier for $10 down and $10 a month. That is not worthwhile?

You can't do that around here.

THE COURT: Mr. Arkin, would this be a good time for a recess?

MR. ARKIN: Sure.

(Jury left the courtroom)

THE COURT: How much more time do you have, Mr. Arkin?

MR. ARBIN: I believe I will have my full time, your Honor.

(Recess)

(In open court - jury present)

THE COURT: You may proceed.

MR. ARKIN: Thank you, your Honor.

When we left off before the break I was telling you about a live human transaction which took place at Rio Rancho, which I said to you shows the investment value of land there and of owning land there.

I told you about Mrs. Linderman who bought land from Pastor Schleibe. The pastor making a profit and how she bought this land on terms, low terms and how she took this piece of land and she traded it in and how she got a vacation travel allowance and how that coupled with what the Albuquerque Federal Savings & Loan Association does, gave her a full down payment upon a single family home selling for $35,000.

I was talking to you about what you can fairly infer were in my client's mind and was in Howard Friedman's mind when this land was being sold.

I want to talk to you about Howard Friedman some minutes from now, but taking him as just an officer of the company and the others, it is a truism in this country that land does go up in price. Everybody knows that and everybody who was sitting here on that stand who had had any experience, any contact whatever said so.

It is also a truism that land in the Albuquerque area has gone up in value or price more rapdily than other places in this country.

You know, one of the things shoved under the victims' noses, I say victims in quotes, I say the prosecution witnesses day after day was page 9 of "This is My Land", Exhibit 388.

This is what has been argued to you as being a fraud, as being a crime. You will recall back it must be two months ago now or at least seven weeks ago where Mr. Devorkin, though he did not wish to concede the point or make the admission, had to say, "There was no contention on the part of the government that these examples in here of very, very profitable land transactions in the Albuquerque area were false."

That is what he had to say. That is what the government, the prosecution had to concede.

What was in my client's mind? These were true. Couldn't they think about these? This was information the prosecution says they had. If they had it and it is true and you can look at htem, what are they going to think?

Remem-er, too, that the government witnesses, Pierce, Olguin, the realtor, Pierce the head of the Council of Governments, Al Pierce, they said prices in the Albuquerque area have gone up over the years. Remember, too, about Corrales Heights, that little town which is right next door to Rio Rancho. You heard Olguin testify that land values had gone up steadily there and that half acre undeveloped lots, raw without utilities and without the promise of a company which has been doing it for fifteen straight years to put utilities into an exchange area, that is no exchange right, these lots selling now or recently for $6500 and in 1974 for $5,000 for a 30 percent increase in price in less than two years.

What were they going to think? That land right next door selling like that and appreciating like that is not going to happen to them. That it's a crime, it's a crime for them to even think that that is going to happen. They didn't even represent it.

That is the worst part of this case, they didn't represent any particular appreciation, any resale, any quick profits, but just go into their mind, the worthwhileness of owning land there, this is something which is fair for you to consider as to what was in their mind.

Perhaps one of the more powerful, absolutely irrefutable indicia of what was in their mind is what they did, what their actions were. They did not in putting their millions of dollars into Rio Rancho at an ever increasing rate stop putting money there or put it just in Year 1 or Year 2. They did it ever year for fifteen years, are doing it today as they sit here in court, and why would people do that if they did not believe in it? Why not just put up your phony community, put up a few houses. You know, put up a cracker barrel or a hot dog stand.

They didn't do that. The built a city which is growing every day and they did it every year at a greater rate. That is powerful evidence of belief. What was in their minds, beyond a reasonable doubt they didn't believe in it?

They are pouring in these millions of dollars into this community and you will see pictures of it when Mr. Arisohn gives you his summation of sweeping streets with houses and factories and shopping centers, the office buildings, clinics, community centers.

You know, as everybody concedes, when you develop it makes land nearby more valuable. What were they thinking? What they were doing is they were putting their money where their mouths were; that they were making that land what it is and are making it what it is going to be, more valuable every day.

That intention has been consistent from Day 1.

Remember Mr. Musgrove, the retired fellow from the telephone company, he said when they came to see me, I think it was the president of the company, those fellows had expansive ideas. They were going to develop this place. That is what he said. They said it then and they said it three years later, eight years later, twelve years later and now they are doing it.

This is not like North Albuquerque Acres where people sold it, gridded it up in a way which had no common sense to it. Unlike Rio Rancho where they gridded it up in a very sensible way taking cognizance of arroyos and a master plan for the future. These fellows in North Albuquerque Acres sold and ran. These people did not.

You consider the comparison there.

You know, it is very ironic here, you have heard a lot about the Albuquerque Planning Commission. Was the Albuquerque Planning Commission ever concerned about Rio Rancho?

Well, there was a report, Exhibit EO in evidence which discusses Rio Rancho as a model, the way to develop land and the way, so they wished, to they thought, it would have been better had North Albuquerque Acres done it years ago and Rio Rancho is doing it today and the Albuquerque Planning Commission says so and the exchange, which helps make the land valuable, that is what they complimented Rio Rancho on.

There is something else. Would a crook, a swindler, a bad man engage in a scheme, go out and spend three-quarters of a million dollars to remove an easement from certain land they were selling. There was this floating easement, this was in documents that are in evidence and I can speak about them. This company spent three-quarters of a million dollars to remove a floating easement.

The railroad had a right of way but they didn't have to tell you where it would go until they did it. So what they did was paid this vast amount of money and got the easement eliminated except as a fixed easement.

When somebody bought land they had a clear title. Would a swindler want to see to it that his customers got free and clear title? Would somebody who had no intention of ever utilizing that land, ever developing it, bother about getting an easement removed? The answer is no. But they did care and they did do it and they spent a lot of money to do it.

Also what is in my client's minds, the HFA appraiser, let me mention him again, it is important. He came in and he said it first, he didn't think much of Rio Rancho then and now it is appraised at $5400 a developed lot. That is the federal government loaning money or guaranteeing money on that and, you know, that is proof positive, irrefutable, that what people got was worth a great deal, maybe even more than they had a right to expect.

You may hear about the exchange. I have spoken about it and you will hear about it more. This company for fifteen years has honored that privilege and the evidence is overwhelming they will continue to do so.

One other point. You heard about Jack Graham or you heard from Jack Graham who was president of Federal Savings & Loan who came here to testify, a man I think I am safe to describe as an utter sole of integrity and decency, he comes here not once but two times, I will talk about that in a moment, the head of a bank which is not a proprietary bank, it is not one where he owns shares, it is one where he has sort of a guardianship of all the monies.

When Rio Rancho initially wanted mortgage money, he didn't do it. They wanted to wait and see. Later on about 1968 they began loaning money out there on special terms, higher interest, shorter payouts and now for the last few years they give them the same rate of interest as any place else in Albuquerque.

In addition, 90 to 95 percent of the price of a house and lot together some people can get very, very large mortgages. You know something, with all of this trust that he has to administer, his depositors' monies, he put $14 million to this very point in Rio Rancho.

Now, Ms. Hynes suggested well, Jack Graham, he knew better, he only invested in Taylor Ranch. $14 million at least in my humble surroundings is a considerable amount of money and I consider that to be an investment of trust funds in effect, an investment based upon, as Mr Graham said,his being convinced that AMREP was going to build and maintain a city.

Now, if a banker who has a trust makes a decision, a judgment that Rio Rancho is viable and that it is worthwhile and he puts $14 million in there and he builds a new bank branch up there, which he gets permission from the federal government to do because the community is rapidly expanding and because Albuquerque is growing to the northwest, how can you say beyond a reasonable doubt that my client, Mr. Howard Friedman, had in his mind to sell something which was worthless? That is utter nonsense. It cannot be.

I say there is overwhelming evidence that these people were selling in good faith. They believed in their product what they were selling. There is no evidence to the contrary. No credible evidence, even the contention is distinctly underwhelming.

He also had a right to believe that Rio Rancho was in the path of development of greater Albuquerque. Now, yesterday Ms. Hynes said nobody agreed that Albuquerque was growing to the northwest.

Well, my recollection is a little bit different. I will let yours govern.

There was a man named Jack Graham that said that, the fellow -- I just spoke about that.

There was Jose Yguado, much as Ms. Hynes didn't like Mr. Yguado.

Even Al Pierce, this man who is the master of definitions within definitions, he said within the Albuquerque urbanizing area, it is going in that way.

Graham and Yguado took that pointer and they shoved it right across Rio Rancho where it is going, right up the funnel.

But, you know, this is one of the unfairnesses in this case, if you take -- this is a ten week case, obviously a large investigation and you know piles and boxes of documents and all of that. Fifteen year history of a company, and you take again a snippet out of one paper and you take what was done at a very dramatic moment in this trial a half quote, sure you are going to find something that you might quibble with, but the ultimate impression these people conveyed, the literature conveyed was from the films, from the brochures, all the literature and from the podium speeches, put it all together and what do you come out with?

I am saying to you don't be governed by one line in one script which may have been used for two or three months at one point, taken out of context or half quoted. That is not fair. You are talking here about ultimate impressions and what did they say?

They said, really to get the whole picture of what it is all about, Albuquerque is a rapdily growing city. Okay. Fact. You heard that from witness after witness after witness. Look at the figures.

The population figures. Increased extraordinarily. Let me digress here for just one moment.

There were projections in 1960 of a far greater population than actually took place. The speed-up may be beginning now. There was a recession, you heard about that. But because these people may have had knowledge of population projections which in the future turned out to be too optimistic, that is no basis for you thinking ill of them or questioning even their judgment let alone saying they are a criminal.

Albuquerque was a growing city and rapidly. You heard yesterday bursting at the seams.

How could anybody say bursting at the seams? It is part of the crime or scheme. I suppose the government would have been happier had what they said was, the city of Albuquerque is expanding at a particular percentage rate and from year to year engages in particular legal municipal annexations, that is to say, that the perimeters expand by legal process year after year.

So they said bursting at the seams. You know, big deal. It is the same thing. It is a poetic way of saying it. If you don't like bursting at the seams, it is sort of a simple, earthy way of saying it.

That city, look at their mosaics. It was growing and expanding. It was not staying within the same seams, so it is a crime to use that kind of description.

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What also was the impression conveyed that Albuquerque was hemmed in on three sides. It had legal constraints on three sides, the north, east and the south. You didn't hear Ms. Hynes say that was untrue. It's not. There is Indian land to the north, the Sandia Pueblo. Mountains to the east. You only have 2500 acres in there right up to the foothills.

You know, I suppose human ingenuity being what it is, you could build homes on the top of the Himalayas or you could build them under water. You could build special igloos in the Antartic, you have to look at things reasonably, what people had in their minds. Don't dynamite the mountains out of the way and convict these people. They had a right to see those mountains because they were there.

Thre were Indian and federal and state owned lands to the south. Everybody agreed on that. Kirtland Air Force Base. Here's a funny one, the state owned land to the south.

You heard that question asked I believe it was of Mr. Yguado by one of the prosecution team.

Well, what if the University of New Mexico or the State of New Mexico changed their mind, wouldn't that make that land available? Sure, you know, if you dynamite a mountain, dig a new canal, you take the land away from the federal government,you pull another $24 from Manhattan Island and take it away from the Indians, yeah, sure, you can change it. It's hopeful. That was really a desperate gasp. Hey guys, you have got me. Let's see if we can change what takes place. In a case where their freedoms are at stake is whether they committed a crime.

About the growth, you heard Al Pierce say, talking about the constraints on the growth, if you take the Albuquerque urbanizing area, this is a question I am asking him, are there not constraints to the east, north and south in terms of future growth?

"A Yes, sir.

That is a government witness.

"Q These constraints are both natural and legal?

"A Yes, sir."

That is at page 4174.

You know when they couldn't make it on the east, they went over to the west. Talk about the Atrisco and Pajarito Grants which are in the southwestern quadrants and the Atrisco going a little further up.

You heard a lot of hullaloo about well, maybe there is room over on the west without going up to Rio Rancho, Atrisco, what did these people -- talk about a criminal case, have in their minds, their right to think about.

You recall my friend Fleming asked this expert Carruthers, this planning fellow in cross examination -- he is talking about Atrisco:

"Q I am sorry, a lawsuit was filed by a company called Westland to try to quiet title to those 50,000 acres.

"A Yes.

"Q That has just been filed?"

Referring to 1976.

"A I believe there have been two suits filed, yes, sir.

"Q Are you willing to give an opinion as to how that lawsuit is going to come out?

"A No."

It is too much to say in the context of a criminal case that these people, even if they are not profound legal or actuals about what is going to happen to a lawsuit, had a right to believe that Atrisco was not available.

Can you say beyond a reasonable doubt that they should have been able to look at the lawsuit and figure out that aside from the very small piece of Atrisco, the western or Snow Vista, that the rest of it could be used because they have a suit to quiet title, everybody will agree, the Court will grant the application.

You know, talking about growth, I say that the government has created a phony issue here because they are trying to persuade you that what was said to people, the ultimate impression was that the very next house built in all of Albuquerque would be built at Rio Rancho.

Nothing could be further from the truth. That was not said. That was not meant. That was not conveyed.

There is nothing like that in the literature, the speaker's presentations and nobody of common sense could have believed that. They went there, they saw it, they saw vacant land. They saw where Rio Rancho was in relation to Albuquerque. Nobody could have believed that and that was not the representation made and don't be persuaded or think about the case in that way because speaking of red herrings, which you heard about yesterday amidst all the discussion about tigers and pussycats, that is of the same kind. That is one red herring you can can along with the last tiger.

Let's look at what was said. This is the principal piece of literature you heard a lot about, it is Government Exhibit 388, it is called "This is My Land." It has a lot in it about living out there and about Albuquerque and about its population.

Then the famous page 8, they say here, "Can continue" let me take it from the top.

It says: "Future growth. A predestined pattern."

"Future" means, you know, in the future. It doesn't mean today, fair.

"Albuquerque's future growth pattern is predetermined..."

"In the case of Albuquerque... and her future growth... limitations on her boundaries always existed. Mountains to the east, and federal, state and reserved lands along the northern, southern and part of her western borders are now virtually 'containing' Albuquerque's future growth."

All true. What they were saying is that in the future that is what is going to happen and that is what is happening and witnesses testified to that.

Let me show you something else. Look at this map. You can look at it in the jury room in 388.

This map shows the direction of growth to Rio Rancho. It doesn't show Albuquerque, this pink impacted region as being on Rio Rancho's doorstep. It shows vacant land, the grey, all around showing some vacant land to the northeast, some left in the west, a little bit left in the south . A very, very, fair representation, which is contained on the scale in miles.

So here it is a color map, right there, showing people what the situation was and what they had a right to believe.

Now, you look at the other things which people were shown at these dinner parties. There was the West Side Story which shows a booming Albuquerque and says there will be growth to the west side, which is fair. It doesn't say just to Rio Rancho, it says the west side. It gives an impression like that. You can ask for the script or you can see the motion picture. Please do that, I am not going to read from that.

But, you know, yesterday you heard Ms. Hynes say that there was an edited version of West Side Story and that that was a dishonest editing, it was awful. She says that they left out anything about the other developments in the west side and that they did that in order to midlead people who saw this edited version.

What you saw was the full version and whether the edited version was shown or not shown, I am not sure, but let's say this, the West Side Story does in its very script, and you will get the script, mention five other developments so that when she says it was edited out, it was not. It was edited in. In.

It is a very wrong statement to make. It is right in the script. Look at it. Five other developments are told about.

They didn't extol the virtues of the other developments. Pretty twisted, contorted, straining thing to say that what you should do here is you ought to extol the virtues of your competitors. What you should say is that the Daily News should say read The Times, The Times should say read the Daily News. Pepsi should say drink Coke. It's just nonsense.

Certainly they didn't extol the virtues, but they did show the one next door to them, Paradise Hills, and Ms. Hynes would have you believe for some criminal purpose. Some criminal purpose. If anything, what they should have done is just showed Rio Rancho alone.

One other thing in terms of the presentation here by the prosecution. You heard yesterday Ms. Hynes

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said it edited out Taylor Ranch. Well, on that count in a peculiar way we plead guilty. Why did they edit it out because at the time West Side STory came into existence Taylor Ranch was not in existence. In other words, it didn't exist, it wasn't there, it is new growth activity on the West Side so the picture did not include anything having to do with Taylor Ranch. It couldn't. They would have to have been visionaries, you know.

That is a piece of evidence thrown at you as evidence of crime. Ms. Hynes has no answer to that. Well, I hope I have given you an answer to that.

"Your Golden Future," read it or hear it and see it, it's a nice picture. In it you have Dick Musgrove saying and he agrees it is true that Albuquerque is growing fast, but it is hemmed in on three sides. So we built this new exchange building two miles from Rio Rancho Estates to take care of the tremendous growth that is coming this side of the river.

True, he said it. In that same picture experts say the logical path for Albuquerque's most dynamic growth and expansion lies to the west and northwest and Rio Rancho Estates stands directly in this path of Albuquerque's future growth.

You heard at least two people agree to that right out front, Jack Graham and you cannot doubt his credibility. Jose Yguado and you cannot doubt his credibility. I will get to him more in a minute.

The point is that what is being said is that Rio Rancho does lie in the path of future progress and if you take a snippet, a little piece here and a half quote, you are not getting the true story, the ultimate impression.

In point of fact it is reasonable to say that Albuquerque as it grows, as people come in, will go right up the shoot right towards Rio Rancho.

Even the scripts, little bits and pieces that were taken out. Here is one of them, 314 that you heard a lot about. Let me read it all to you, and not just part of it.

So as a result of this straddling of the city on three sides -- this is the script 314 -- the growth can go in just one direction, one direction only, and that happens to be to the westerly and northwesterly side from the city of Albuquerque in the very path where Rio Rancho is located. A matter of fact, today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us. The phrase left out before. Because its entire growth area is straddled by Rio Rancho Estates and, ladies and gentlemen, we are proud of what we have accomplished here in the last several years.

You heard Mr. Graham when he was asked about this quote, the full quote, he said it was accurate.

When language is not left out it is pretty clear what they were saying and pretty honest.

Each of the customers testified about their impression, you had Mrs. Vives, referring to pages 6642 and 43 and 4, she said that the impression she had was that Albuquerque could only grow to the mountains and then eventually people would have to drift out to the northwest and Rio Rancho is what was from the northwest. That that was her impression that she gained from the very same dinner party that everybody else went to and that was the only fair impression.

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Mrs. Mellenbrook, 6748, says: "We knew, Albuquerque can still grow in other directions." She was talking about a house or two or even a small development, "but eventually it would grow to the northwest." That's the ultimate impression.

Mrs. Mellenbrook said on cross, "They didn't say when. It's in the future."

You know, we have had our witnesses come in and even some on their case which prove out this representation of future growth to the northwest. Let me talk to you just a little bit about one of the pieces of evidence in this case which may be a bit confusing.

You heard Ms. Hynes read from an SEC statement filed in 1962, Exhibit 400-B, in which the defendants said that they did not know the impact of Albuquerque upon Rio Rancho. They didn't know about the future of Albuquerque in effect or where it was going to go.

That was in 1962 and that was honest and that was straightforward. They had just bought the land.

In 1963, this is what they got from Jose Luis Yguado, I am referring to BK, this was a report done by a young man who was an urban planner who had worked for the Albuquerque planning commission. I am going to read to you what he said which shows you, and this could, as you

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know, bought this report, they excerpted it, they digested it or condensed it, whatever, they knew about it, this was what was in their minds you can find.

Let me say something about Jose Luis Yguado. Yesterday effectively Ms. Hynes called him a liar. He was a bought witness. That's what she was trying to infer to you.

You will have to size up his credibility yourself. Here is a man who worked for the Albuquerque city planning commission, who came here at his regular hourly rate because he was being compensated for his time. After all he has a family to support, he can't come here for free. Maybe the government can make people do that, but the point is he came here and look at him. Is he a liar? Would he get on the stand -- he has no axe to grind with these people -- he is going to perjure himself in a federal trial at $35 an hour? Look at the way he talked and who he was.

Jose Luis Yguado, they didn't like him, they spent a lot of time talking about him. I say they were not very successful because that man stood up and that man was honest.

Here's what he said in 1963:

"Given the present average density for the city of Albuquerque, (5.16 persons per acre), the area required to accommodate an Albuquerque of 1980 would be 109,980 acres (the city's present area is approximately 40,000 acres). Even if the growth density is increased, it is obvious that substantial new areas must be developed to accommodate future growth. It is reasonably to expect, therefore, that at least 80,000 acres will be required to accommodate such growth. This would indicate a community at least double the size of present day Albuquerque," by 1980.

"The city, therefore, will need to extend its present limits to affect this accommodation."

He is talking there about bursting at the seams.

"The major consideration then is in which direction is this expansion most feasible. The city limits to the east have been expanded as far as possible to the Sandia foothills; to the south, the military bases, and Indian lands are limiting to extensive expansion; to the north except for some developable land in the Elena Gallegos grant, the Sandia pueblo is a definite limit to northeastern expansion."

These imposed limits to the east, north and south leave no alternative for expansion except to the west. It is reasonable to assume that any major expansion of the city to accommodate necessary growth and development in the ensuing years shall be to the northwest mesa area."

What more were these people saying than Jose Yguado said in 1963 and on the stand here? Good faith. I say we have shown good faith beyond a reasonable doubt.

They have come no where near showing that these people had that representation made of growth to the northwest in bad faith because, one, it is true, and, two, they had a right to believe it was true.

Even Al Pierce, ex-director of COG, said -- this is a question I asked him:

"Q You would agree, would you not, that a prediction of growth to the northwest within the Albuquerque urbanizing area made 10 years ago, 15 years ago or 5 years ago would have been a reasonable one?

"A Prediction made 10 years ago, yes, sir. I would say that would be a reasonable prediction."

Reverend Rupley, at 6440:

"Q As a former president and member of the West Side Association and as resident in Bernalillo County since 1968, would you answer yes or no in the first instance: Do you have an opinion as to the direction of growth of the city of Albuquerque?

"A It can only grow west and northwest."

That is a man who has been there living on the west mesa with his church. He knows.

Mr. Graham, the man from Albuquerque, living there for 44 years, president of the savings and loan association which deals in loaning people money to build homes and developing, even a competitor of Rio Rancho, and he came in and he said, "That's where the population has to grow, through Rio Rancho, toward Rio Rancho."

He told you about the fact that there are only 2500 acres left in the northeast. He was criticized because he doesn't know, you can't compare him to Carruthers.

Well, remember what he said about Carruthers, which I think strikes home, which is that it's his business to know where land is, he is putting money up. He is building.

He had no good things to say about planners who sit there with a computer and talk about densities and don't look at the real world the way it is.

He said, "The northwest has to be the area," at 6328, "that Albuquerque will be growing to and it is already growing there. It's in the path of progress."

6331 he said, "Consequently, as Albuquerque grows, the only place Albuquerque can grow, and we have known this for a long time, is to the northwest."

6334, I asked him the question:

"Q Mr. Graham, would it have been accurate in the mid 1960's to make a representation that Albuquerque's future growth pattern was predetermined and that it must take place toward the northwest?

"A That's an accurate statement if we grow, meaning if people come in, if people have babies.

"Q Meaning if people have babies and things like that" -- I guess I asked him that.

The court says: "When people come in?

"THE WITNESS: When people come in, yes, sir.

"Q Would that representation be accurate today?

"A Very definitely.

"Q Is that prediction coming true today?

"A Yes."

He put that pointer right through Rio Rancho. He said, "The line of growth, path or progress traverses Rio Rancho." This is at 6399. He has put his money where his mouth is.

You heard Mr. Yguado, who is an expert, who is a land planner, and knows a lot about what goes on in Albuquerque. I asked hi, Mr. Yguado, "Albuquerque is bursting at the seams but the city is surrounded. Albuquerque's expansion is blocked on three sides by high mountain ranges and government reserve lands on which they cannot build. There is only one direction which Albuquerque can expand, the northwest, and that's precisely where Rio Rancho is located."

I said, "Is that a fair statement, Mr. Yguado?"

And he said, "Yes."

"Would it have been fair in 1966?"

He says, "Yes." He says, "What I said."

I refer to the same exhibit, one of the scripts, 316, I asked him whether it was a fair statement to say Albuquerque is surrounded on three sides on which it cannot build, the city can only expand in one direction and that direction is squarely through Rio Rancho Estates. The city cannot expand without first going through our property. I said, "Is that a fair question." And he answered, 6833, "Without question, yes."

Well, that's what was in their minds. That's where the evidence is at.

We have heard a lot of testimony here and a lot of discussion about densities and people with pocket calculators out. You had Carruthers and you had these various reports.

I am going to try to get through this in a relatively few moments. I don't know how few, but few.

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This density bit started with Carruthers. Keep in mind my clients are not people who sit there like an Albuquerque city planning commissioner trying to figure out what is in some kind of theoretical sense desirable in terms of Albuquerque's city, meaning, you know, should we have high rises, should we build on our central park, meaning take the park land within Albuquerque.

These people were looking at real, hard facts and the real, hard facts do not bear out Mr. Carruthers.

He, in effect, said that in Albuquerque the present city limits could contain two million people. That's what his direct testimony was. I am not going to go through it in great detail, but essentially what he had to say when he got to cross examination by me and Mr. Fleming was that you could hold two million people if you changed the entire historical trend of Albuquerque.

Rather than having 97 or 95 per cent people owning single homes, which has existed traditionally, you change that and then you might be able to do it, it's possible.

Well, that's not the kind of a thing you can get somebody on, that's just not sensible. That's just not the way it is happening.

Indeed, we learned from him the density in Albuquerque, that's the number of persons per gross acre, has gone down, 5.16 to presently where it is 4.89.

When you look at the various documents, take the 1985 land use plan, you had a working assumption in 1985 of 825,000 people. Keep that figure in mind. It's a vast number of people increase from what there is now or was in Albuquerque at that time -- what there was in Albuquerque at that time.

We are talking about an area outlined in green, the study area of 212,000 acres. Now, this is kind of a hard concept and I had a lot of difficulty with the talking it out. When I cross examined Mr. Carruthers, we talked about the 212,000 acres as gross acres and then what we did is we eliminated from those gross acres acres which could never be developed. That is to say, if you are going to calculate the density of people per acre, acres which should not be within the equation, let's throw them out. They are manifest, they are obviously undevelopable for legal or physical reasons.

Carruthers came up and agreed on cross examination that there would be about 62,000 acres out of the 212,000 acres which if you take even the density of five times say the 150 remaining, you end up by 1985 with projections in that plan as not having nearly enough land if you use every square foot in that study region, wh-ch goes right up to the line of Rio Rancho, not enough land to accommodate those people by 1985, but if you do it precisely, you do it in a way which Jose Yguado did, not rough, crude, gross estimates, not defensive ones, you end up, and this was done by Mr. Yguado, he sat in my office one night after he testified and before he testified again in which he calculated with precision the number of acres not includable properly within the 212,000 acres.

The reason for this is to show that if you are going to have 300,000 more people coming in to Albuquerque, they are going to have to go right up the shoot to the northwest, to the land that Rio Rancho owns.

What did he eliminate? The net result is, you look at this, I am not going to go around it piece by piece, what did he eliminate? He eliminated lands which were Atrisco, Parajito, military bases, the mountains, North Albuquerque Acres, the riverbed, Tijeras Arroyo that you can't build in, the southeast lands in trust and even certain volcanic lands, and you heard yesterday in the prosecutor's summation, oh, you shouldn't do that, that's silly. Yet, in the prosecutor's exhibit, let me read this to you because it backs up Mr. Yguado 100 per cent, this is the AMA X-ray report at page 23, talking about the escarpment: "Residential use is limited on the lava flow because of" -- this is from page 23 of that report, "the expense of cutting through the hard basalt," [illegible] Yguado described as hard as granite, "to lay water and sewer lines. Furthermore, the area's steep edge [illegible] access difficult and expensive."

This is an Albuquerque planning commission report which agrees with Mr. Yguado. When you use his estimates, you end up with a little over 100,000 acres within the 212,000, the green lines, and if you take the population projection of 825,000, let's give the defendants the benefit of the doubt, then you have 300 some odd thousand more people coming there, where are they going to go? 100,000 acres can hold 500,000 people or 516,000 people, so you have 300,000 people who are going to have to go somewhere else. That means to the northwest. [illegible] a reasonable assumption.

I have not too much more, ladies and gentlemen.

You heard about Mr. Avellanet. A lot was made of Mr. Avellanet who came in here and he testified that he had written this report and in the report he said there were 42 square miles of available land in the northwest and maybe six more square miles making a total of [illegible] he said you could put a lot more people in there, [illegible] 200,000 more people or whatever his number was.

Well, this is the same guy who did his report which he had to concede was a crude estimate and he did it by speaking to Mr. Carruthers. He did the same thing together with a principal of a Corrales High School.

He says that he does this measurement and he puts it in his report based upon that kind of information.

Well, when he was asked on cross examination, where is that land, he couldn't find it. This is Ralph Avellanet who came up here to testify in a criminal case, he couldn't find what he was talking about.

Then you had Mr. Yguado, who measured the entire area, developed and undeveloped, not just the 48 square miles of undeveloped he was talking about, and Yguado found only 50 square miles total.

Speaking of quicksand and speaking of being a little bit less than credible, I'd say Mr. Avellanet, I don't know whether he meant it or not, but he really was off base, he didn't know what he was talking about.

He did agree that he is subject to error. He says, if you array the facts and reflect upon them, why you might come out differently. He just likes the way he arrays the facts. His basic problem was he didn't array the facts. He just punched out a report late one night.

Even with his wild report and even with his even wilder testimony, he said on cross examination he didn't consider any of the land on the west side because that woudl certainly have an impact upon Rio Rancho. So, if it moved to the west, that's good for Rio Rancho.

Yesterday Ms. Hynes said directly to the contrary. What is going to happen to the west side is not going to help Rio Rancho.

Her own witness says to the contrary. I think common sense says to the contrary, too. Development in that direction obviously will have an impact on land nearby.

You know, speaking of the west, one of the last -- very funny, speaking of shifting sands, in the course of this trial we started out with a lot about the northeast of Albuquerque and I think we all know more about Albuquerque than anybody who lives there. Later in the trial, when the computers didn't find very many acres, what did they do, they shifted over to the Rio Puerco or the distance between Rio Puerco and Los Angeles.

You can go due west, go across the canyons, trudge up the mountains, dig out the arroyos and you have more land.

Some day, but not a fair inference.

You heard the criticism of Yguado. Well, sure Yguado in his original report talked about Atrisco and he talked about Rio Puerco, he talked about the escarpment, but he was talking about something which was mathematically possible, not reasonably possible, as he explained on the stand. Atrisco is out. Rio Puerco is very far away on the way to Los Angeles and the escarpment, as the AMA report says, you can't use. You don't end up with any more than 68 or much more than that.

Speaking about density analysis and that kind of thing and Mr. Avellanet, there was a very telling piece of testimony, which I am going to read to you and then I just have a few more things to read to you and we can all go to lunch.

The court was questioning Mr. Avellanet, Mr. Avellanet's assumptions about how many people you could put into that area, which nobody else could find in the northeast, the missing 42 miles.

He says -- this is the court -- I shouldn't say "he."

"So how can you in your mind assume that they are going to be the same as developed land when they become developed?

"THE WITNESS: I make that assumption that they will handle a certain density of people in this case.

"THE COURT: But if you develop the whole 42 miles, wouldn't they be comparable in gross acreage to what Albuquerque was gross?

"THE WITNESS: I don't recall what Albuquerque was in gross.

"THE COURT: Well, the figure is 42,500 acres within the city with a population of 215,000, five per acre in 1962."

Later on, a page later, 4889:

"THE COURT: Your assumption is that the 42 square miles will be fully developed?

"THE WITNESS: That is correct.

"THE COURT: But that has not been the history of the city of Albuquerque, has it?

"THE WITNESS: In terms of not -- of having some undeveloped parcels?

"THE COURT: Yes.

"THE WITNESS: That's correct.

"THE COURT: Therefore, why shouldn't the history of the 42 square miles be the same if you are projecting futures from past trends?

"THE WITNESS: Well, there is a possibility it could. There was, there is a possibility it may be more dense. The land use trends at this point in time are certainly toward denser development."

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That's what Avellanet says.

"THE COURT: We you talking about Albuquerque?

"THE WITNESS: Yes, sir.

"THE COURT: All right, you are excused."

You know, that's really all for Avellanet. He didn't know what he was talking about. He was making assumptions, possibilities. This is a criminal case. These people are on trial for their lives, their life's work is at stake. Possibilities, building high rises, you know, building basements, living underground.

Albuquerque is going to grow to the northwest just as they have said and we have proven that.

There is one other thing before I leave the subject of the northwest and I think it illustrates in a very dramatic way the cruelty of this case, over-zealousness. Here is a case where this man is on trial for something which is going to have obviously an enormous impact on his life. We are talking about liberty. We are not talking about money or a spat between somebody, you are talking about the most serious thing that can happen to somebody aside from, say, a fatal illness. In thise case you recall Mr. Graham was asked on cross examination a question by one of the prosecutors which was taken from a sentence and the question was based upon a half quote.

This man, who is the soul of honesty, said, that would not be accurate. Certainly it wouldn't be if you just read the half quote.

I say there is no excuse for something like that in a criminal case. There was no excuse when something like this is at stake for that kind of chicanery, that kind of game.

You know, Mr. Graham came back, he came back from Albuquerque, and let me read this to you, it is just a page and a half, this is by me the day he came back:

"Q Mr. Graham, on Tuesday last, which was January 4, 1977, do you recall being asked by Mr. Kaufman the following question and then giving the following answer" -- this is from page 6742 of the transcript of that date at the bottom of it, I am quoting the question from the previous day -- "Let me read to you from 314, this is in 1972: 'Today it is physically and geographically impossible for the growth of this city,' referring to Albuquerque, 'not to first come through Rio Rancho Estates.'

'Is that an accurate statement?

That was Mr. Kaufman's question.

This witness over here said: "Do you recall being asked that question" -- excuse me. I am sorry. "Is that an accurate statement?" And then the answer was:

"A No, I wouldn't say that is an accurate statement if it says 'first.'"

He is a very honest witness, a very careful man.

Then I said to him:

"Q Do you recall being asked that question and giving that answer?"

And he said: "Yes.

"Q Let me read to you from the same exhibit. I am going to read to you the complete sentence from which the quote was taken together with the sentence immediately preceding it and ask you the same question asked by Mr. Kaufman. This is quoting from the top of page 9, Exhibit 314. It is the sixth line down from the top.

"So as a result of the straddling of the city on these three sides, growth can go in just one direction - one direction only, and thathappens to be to the westerly and northwesterly side in the city of Albuquerque in the very path where Rio Rancho Estates is located. As a matter of fact, today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates before it gets beyond us."

I quoted that and I asked him: "Is that an accurate statement" and he said "Yes."

He came all the way back from Albuquerque for his friend. One of the cheapest shots in this trial was when I asked him what he thought of Mr. Friedman. He said very simply, "He is my friend," and, you know, it is a very touching thing. Here is a human being, flesh and blood, you have to think about him that way, has put 15 years of his life into this. He was president of the company for a while and active in finance. There is not one iota of evidence that this man ever said anything untrue to anybody or ever countenanced it being said. All the evidence is to the contrary. He went to a few dinner parties.

There is nothing here to show him to be other than a decent man and people said that, person after person, Mr. Perlmutter, Chief Kearney said this was a man who helped the fire department get free money, donated money.

Then Mr. Graham said, "He is my friend." This cheat shot, he says, "If I asked you if you knew he had said that thing, that half quote, would he still be your friend, would you still think the same thing of him?"

The man was honest enough to say, and decent enough to say, "No." He was decent enough to come back and he came back and he corrected it. That's what he did. This man's life is on the line.

You go in that jury room and you think about good faith because these people spent 15 years and they put millions of dollars every year into building a community and I ask you, would cheats do that? Aren't they entitled to some doubt for that, some benefit? Aren't they entitled to be considered for what they did?

You think about the steps they took to make sure salesmen would not tell a lie, the bible they wrote for the salesmen. Shouldn't that be considered?

You think about the refund guarantee, the fact that contractually they set this up in such a way that people couldn't get hurt. Anybody could go out and see it. Aren't they entitled to some benefit for that?

I say to you I cannot believe that 12 fellow citizens will go into the jury room and find that what these people did at Rio Rancho is a crime, a fraud or a swindle. They are innocent and they have not even come near proving anything but a waste of a lot of prosecution money.

THE COURT: We will adjourn for lunch. Return at 2:30.

(Luncheon recess.)

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AFTERNOON SESSION

2:30 P.M.

(In open court - jury not present)

THE COURT: Yes, Mr. Devorkin.

MS. HYNES: Your Honor, the government has an application.

With repect to Mr. Arkin's statement during his summation that the material that was used was submitted, reviewed by state agencies and could not be used until permission was received by the state agencies, the government in light of Mr. Arkin's statements in summation renews our request for a request to charge that submission to the state agencies did not constitute approval because that was the clear inference that Mr. Arkin was arguing to the jury.

THE COURT: Your application is denied. He came within the bounds which I set before.

MS. HYNES: The second matter, your Honor, is during the course of Mr. Arkin's summation he was giving his opinion as to the credibility of witnesses and in particular Mr. Graham and I would ask the Court to caution in the remaining summations that defense counsel not give their own personal views as to the credibility of the witnesses that have appeared.

THE COURT: I think you did about the same, Ms. Hynes.

Bring the jury back.

MR. ARISOHN: Your Honor, just so there is no confusion. The order of summations this afternoon will be Ms. Cross, Mr. Lavinsky and then me.

THE COURT: All right.

(Jury present)

THE COURT: You may proceed, Ms. Cross.

MS. CROSS: Your Honor, members of the prosecution and ladies and gentlemen of the jury:

My name is Lee Cross and I represent Henry Hoffman in this case. He is one of the individuals charged in this case and you will have to decide whether or not the prosecution has proven beyond a reasonable doubt that he and the other men here sat down and concocted a scheme to steal money from people. That is the issue in this case.

Now, Mr. Hoffman and Mr. Oberman negotiated the purchase of the original land that was to become Rio Rancho Estates. It was a beautiful piece of land. Land you could build on, land that was near the largest city in the state of New Mexico.

Mr. Hoffman worked full-time at the company and devoted a substantial amount of his life to this company, but in recent years he's turned his creative endeavors elsewhere. Specifically, Mr. Zaknich testified he was very successful in "Jacques Brel is Alive and Well and Living in Paris."

In his summation Mr. Arkin mentioned to you that there were a number of matters which you only learned about on cross examination.

You only learned about the fact that Mrs. Bonavisa almost made a sale.

You only learned about the double or triple density on which Mr. Carruthers' figures were based on cross examination.

He also mentioned that significantly the prosecution in its summation relied most heavily on a witness that we never got to cross examine.

He also alluded briefly to a very basic and large aspect of this company that you only found out about on cross examination of witnesses and that is state regulations.

Why is it that the prosecution did not want to bring out for you that virtually everything AMREP did was regulated by various government agencies?

Why? Because it is very, very telling evidence that these men are innocent.

If they really wanted to sit down and conduct a scheme to defraud, if they really wanted to cheat people, if they really wanted to steal people's money, why would they set up a business in an industry that is very, very heavily regulated?

If they really wanted to cheat and steal, why would they have their business headquarters in New York City? Why would they sell a lot of land in the state of New York with the New York Department of State looking over their shoulders at everything they do?

Would they have abided by the state regulations if they really wanted to cheat?

If you had heard only the direct examination of the witnesses in this case, you never would have known about the state regulation that AMREP was subjected to.

As Mr. Arkin mentioned, all the advertising literature used in the state of New York had to get what is called an NYA number before it was used. You can see the NYA number on the literature in evidence and any literature that does not have an NYA number on it was not used in the state of New York.

It was AMREP company policy that no literature -- no literature -- be used in the state of New

York unless it had first been submitted to the New York Department of State and got an NYA number.

Every salesman, every administrator, every person who worked in New York testified to this when we asked them. We asked them on cross examination about it.

Mandel said it, Zaknich, Lederman, Perlmutter, Bondy and Monaco all said it. It was company policy. You couldn't use it unless it had an NYA number on it.

Take a piece of copy, a piece of advertising in this company and follow the route that it has to go. You start with the copywriter, he writes the piece of copy.

It then goes to the fact verifier who verifies the facts. After that it then goes to the legal department in the company and they look it over.

It then goes to the New York Department of State. If the New York Department of State wants some changes made, it goes back to the copywriter, back to the fact verifier, back to the legal department, back to the New York Department of State.

That is unusual. In most industries you don't have to do that, but here that is what they did. AMREP set that up.

They set up a fact verifier and then they had a legal department to look at it and then it went to the New York Department of State.

What other evidence is there of state regulations? New York State sent inspectors out to Rio Rancho on at least nine occasions and inspectors from other states also went out to Rio Rancho to make on-site inspections.

They looked at the developed portion of the property. They looked at the undeveloped portion of the property.

They inspected every unit that was sold in the state of New York.

Mr. Perlmutter testified that their review of literature in the offering statements was based in part on this on-site inspection.

State inspectors made unannounced visits to dinner parties. Both Mandel and Perlmutter testified that AMREP had to send the New York Department of State a schedule of dinner parties at least seven days Before the party was held.

Mandel saidit once was thirty days and they shortened it to seven days.

They then could cone to whatever parties they

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wanted to come to.

Mr. Lederman testified that inspectors had been to dinner parties that he was at. They came in unannounced, never said they were coming. They checked the materials. They watched the movie. They heard the presentation and they never criticized what had been done.

Mr. Bondy testified about state inspectors at dinner parties in these words and this is from 1368 and 1369:

"Q I believe you testified that all the promotional material had to have an NYA number, is that correct?

"A By law they should be. To the best of my knowledge all of them did.

"Q Did the scripts that you read from have an NYA number on them?

"A You mean the manager's presentation, such as it is?

"Q Yes.

"A It does not have an NYA number, but it is a matter of public record. That I do know.

"Q How do you know it is a matter of public record?

"A For the simple reason that from time to time at these various dinner receptions, we had inspectors from the Department of State at the various dinners, and I'm quite sure I could not say what I did unless they had a copy of it.

"Despite the fact it does not carry an NYA number, it is a matter of file. I believe there is an NYA number attached."

The New York Department of State also had to approve all price increases. So did the regulatory agencies of other states.

Brokers and salesmen all had to be licensed by the state. They took examinations, Mandel and Perlmutter testified to that.

We introduced into evidence books that they studied.

Finally, in a number of states where AMREP's land was sold, offering statements were required by state law.

What are these offering statements? Ms. Hynes claims that they don't say anything, but they are required by law. Mr. Perlmutter testified that certain statements were specifically required by law to be in them.

Now, the prosecutor says they aren't enough. They contain the pros and the cons of a purchase of land at Rio Rancho.

They don't say Rio Rancho land was a bad investment because you cannot say anything in the offering statements that you don't believe.

She read to you a part of this statement about resale, lots may be purchased for speculative purposes, but resale may be difficult for a number of reasons.

Mr. Arkin read to you the full statement that was in there. Think about it.

What kind of a product do you buy that you get a report on like this? If you buy a house, does the present owner of the house give you a report on the pros and the cons of why you should buy the house?

If you buy a Cadillac, does General Motors give you a report on why you should and why you shouldn't buy a Cadillac?

If there were a property report like this on a Cadillac, it would sya, "It's a prestige car but you get lousey gas mileage."

If you had a property report on a sub-compact car, it would say, "This car gets great gas mileage, but if you are in an accident, you have a forty percent greater chance of being killed than if you were in a larger car."

You don't get property reports with most items that you buy, but you get them when you purchase land at Rio Rancho.

AMREP and the other companies that sell land are required by law to give them and they gave them and they complied with the law.

AMREP didn't run away from these states. It didn't run away from the states where offering statements were required. It didn't only do business in those states that didn't have offering statements. It did a lot of its business in New York. It had its headquarters in New York.

AMREP company policy was clear: Every purchaser had to get an offering statement.

Beginning in 1969 the federal government required a property report of its own. It gave purchasers forty-eight hours in which to cancel for any reason at all.

AMREP didn't close up its business. It didn't stop selling land when the federal government required property reports of its own. It bought more land because AMREP and the people who were running AMREP had nothing to hide. They weren't doing anything wrong.

Everything they were doing was open and above board.

You have heard testimony from a number of the managers and the people on property reports. What did these people say. The prosecution witnesses who were called, they said that it was AMREP company policy that every purchaser get a property report.

You also recall the testimony that it was company policy that the property reports be put on the tables. Bondy said that salesmen were instructed to put them on the tables.

Ms. Hynes said yesterday that the speaker in the front of the room never referred to them. I suggest that she has gone thrugh and culled out presentations without such a reference because Mr. Bondy testified, and this is from page 1242:

"It was the manager's responsibility in his presentation to the public each and every night to make them aware that the property report, as well as the offering statements, are made available for them at the tables. This was a part of our presentation."

Lederman also said that the property reports had to be on the tables and he had seen people reading them at the dinners. He said that every purchaser had to get them and had to understand that that is what he was getting.

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Yesterday Ms. Hynes referred to a prosecution witness, David Jones, who said he was told to initial the contract and he initialed it without really knowing why he was initialing it. In court you will recall that Mr. Lederman was shown David Jones' contract and asked about that specific paragraph with the initials. His testimony went as follows:

"Q Did you advise your salesmen to make sure that they told the purchaser that they were receiving these reports and were initialing for the receipt of these reports?

"A Yes.

"Q And that was what you were attempting to say on direct examination?

"A I thought I had said that.

"Q So, you specifically told your salesmen to make sure that the purchaser knew that he was receiving these reports?

"A Yes."

Perlmutter also said the same thing.

What did Danny Monaco say?

Let me digress for a moment about Mr. Monaco.

You will recall that he was involved a bit with Geller where they got together to cheat AMREP and some of the customers out of their money and he was caught for this. The company fired him. They turned him in and he got convicted of felony for it. If there was anyone that had a motive for revenge to get back at AMREP, he did.

What did he say about the property reports, at 2240 to 4411:

"Q With respect to the property reports and the offering statements, were prospective customers also provided with those reports and statements at dinner parties?

"A Yes, they were part of our selling tools, if necessary, or they were on the table, yes."

A little later on:

"Q Required by the company to be on the tables?

"A Yes."

A bit later:

"Q Where they were sitting each one had a copy of the offering statement and a copy of the property report, is that the way it took place?

"A Where they were sitting? It was placed on the table. For me to say where someone had placed it, I can't state to that.

"Q But you each --

"A Company policy was that each buying unit should have a property report and offering statement presented to them."

Perlmutter also said that the salesmen were instructed to put the property reports on the tables. AMREP insisted that all purchasers receive them.

It was company policy, Perlmutter testified at page 3433:

"Q And it was also company policy, wasn't it, to permit customers or potential customers to take away from the dinner party the advertising, the property reports, the offering statements whether or not they purchased land?

"A Yes. They could take whatever they wanted to."

You will recall various of the manuals in evidence for salesmen insisted that the property reports be used.

There was one salesman, Mr. Masone, who testified that from July, 1971 until the tear-off receipts came in in March of '72 that property reports were not always put on the tables. When they were put on the tables they were hidden under the sugar bowls and hidden under the napkin. I am sure you all remember the sugar bowl caper. That is when the guest eating his grapefruit would pick up the s[illegible]r bowl and, wow, he finds the property report or maybe the guest puts his napkin in his lap and what does he uncover on the table, a property report. You can consider that when you weigh Mr. Masone's testimony.

I ask you, though, would AMREP Corporation, would these men do business in a state with strict regulations if they really had larceny in their hearts? Would they comply with the state regulations if their intent was wicked? Would they bother?

Not only did the state regulate AMREP, not only did AMREP comply with state regulations, but AMREP regulated AMREP.

A few minutes ago I mentioned a fact verifier. Larry Perlmutter testified that AMREP hired a fulltime person whose job it was to verify the facts that were put into the advertising.

Why would AMREP go to the expense of hiring a fulltime person to verify facts if they really didn't care?

Every salesman had to sign a contract with the company promising only to use authorized literature, to tell the truth, to do nothing dishonest.

Zaknich testified to that, Mandel and Perlmutter testified to that.

AMREP also trained the salesmen. They were trained with the property reports so that they would know what they were selling. They were trained never to misrepresent.

Perlmutter and Monaco testified to that.

Let's look at the training manual. This started out as Government Exhibit 202. The prosecution only offered a part of the training manual into evidence. We offered some more of the training manual into evidence, the parts they had left out.

One of them was Exhibit CV and that reads:

"Salesmen's responsibility to customer.

"1. Honesty in presenting product.

"2. Sincerity in customers' interests and desires.

"3. Integrity in word and deed.

"4. Don't oversell.

"Legal restrictions:

"1. Total ethical adherence to all laws,state and federal, governing land development industry."

Another part of this training manual was Exhibit CX, Rio Rancho property report.

"Group participation with reading of every section; after, every section explained. Do not proceed to another section until all questions are answered and you are satisfied that everyone understands each section clearly."

The OPC manual told salesmen to understate. Never exaggerate.

There is testimony that the salesmen were encouraged to go out to Rio Rancho to see the property so they would learn about what they were selling.

Bondy testified to that. Mandel testified to that. Perlmutter testified to that.

You recall Mrs. Miller, the tour guide, she testified that the tour guides were given books to read, books published by the University of New Mexico and state agencies so that they would be knowledgeable on the tours.

Managers were hired to police salesmen. It was their job to make sure that there were no misrepresentations; that people got their property reports.

And AMREP fired salesmen for making misrepresentations. Mandel testified to that. Monaco testified to that. Perlmutter testified to that.

Monaco said, and I quote from 2241:

"Q It was also company policy that misrepresentation by a salesman was forbidden?

"A People were discharged."

Even Mr. Masone, even he testified to that.

The people at AMREP were adamant, salesmen had to tell the truth. Everything had to be above board. The purchasers had to be dealt with honestly.

In fact, isn't it interesting that in this case many of the witnesses who were called by the prosecution said that these men were honorable; that the sale of land at Rio Rancho was an honest undertaking and these men intended to develop Rio Rancho.

Mandel testified at pages 947 and 48:

"Q I take it during the years you were with AMREP that you didn't believe that you were participating in something which was dishonest?

"A No, I did not.

"Q You don't believe any of these men here ever had in their minds they were selling something different than what they said they were?

"A No, I do not.

"Q Based on your experience in those years you were with the company, do you believe Rio Rancho will continue to grow?

"A Yes, sir.

"Q Is there any time that you know of while you were with the company that they failed to live up to a promise they made to any one of its customers?

"A Never.

"Q Mr. Mandel, were you proud of selling Rio Rancho?

"A Yes."

THE COURT: Mr. Lavinsky.

MR. LAVINSKY: Your Honor, members of the prosecution, fellow defense counsel, ladies and gentlemen of the jury:

My name is Larry Lavinsky. I and my colleague, Lois Thompson, represent the defendants AMREP Corporation and ATC Realty Corporation.

You have heard a detailed summation by Mr. Arkin. Tomorrow you will hear another by Mr. Fleming. I am going to deal with only two areas of evidence which clearly establish the good faith of the defendants and the baselessness of the charges against them.

One of the striking things about this case is the contrast between the picture that the prosecution has been trying to paint of the defendants as clever swindlers and the reality of Rio Rancho as a living and growing community of which any developer could justifiably be proud.

Ms. Hynes in her summation has asked you to disregard the developed area because she's not complaining about that, she says. But the fact is that swindlers don't spend 15 years developing a flourishing community. The defendants have spent 15 years in developing such a flourishing community.

You will recall that Ms. Hynes also played down the importance of AMREP's contract with its purchasers, but, here again, swindlers don't live up to the terms of their contract. Swindlers certainly don't give their customers more than their contract requires and, yet, that's precisely what these defendants have done.

Of course, Ms. Hynes would have you believe that the development somehow establishes the charge in the indictment that, and I am now quoting from the indictment: "The defendants had no intention of substantially or completely developing Rio Rancho Estates as a master planned community."

Now, that's what the indictment charges, but let's look at what the evidence actually shows here.

At the trial the prosecution all but abandoned its claim that Rio Rancho is not a master planned community. They couldn't have done otherwise in light of the overwhelming proof of the planning that has actually taken place.

There were no less than three planners retained by Rio Rancho over the years. Mr. Yguado in 1963, Harman, O'Donnell & Henninger in 1965, and thereafter the firm of

Flatou, Moore, Bryan & Fairburn. You will recall that Mr. Yguado in his testimony describes that firm as the largest planning and architectural firm in Albuquerque.

Ms. Hynes in her summation implied that the use of planners in addition to Mr. Yguado showed a lack of faith in his comprehensive plan. That simply isn't so.

First of all, Mr. Yguado's plan was a general guide to development, not a straightjacket to new ideas.

Now, his plan, which is Exhibit 2010 in evidence, states at page 73 and I am now quoting from Mr. Yguado's plan: "All of the elements and recommendations in this plan are of a general nature. Future studies and detailed design, coupled with the desire of the developer and future citizens of Rio Rancho Estates, shall determine the exact nature of development."

In short, he made it perfectly clear that this was to be a flexible and general guide to future development, not to prevent any other planners from coming in for further planning on the property.

Mr. Yguado, in fact, testified to his understanding that the general concepts of his plan were followed at Rio Rancho.

The Harman, O'Donnell & Henninger report was merely a specific proposal for the development of only part of Rio Rincho.

Now, the prosecution's own witnesses testified in glowing terms about the nature and the extent of the development at Rio Rancho. For example, Mr. Avellanet testified that when he visited the property in 1976, some ten years after his initial visit, that he was "favorably surprised" by what he saw.

Mrs. Henry used the word "beautiful." Remember that, she used the word "beautiful" to describe what she saw at Rio Rancho.

Mrs. Bonavisa and Mr. Miles, among others, testified to the growth they personally observed at Rio Rancho over the years.

Yet the prosecution would have you believe that all of the planning, all of the development at Rio Rancho over a 15-year period was nothing more than window dressing and that only 5 per cent of the purchasers will ever live there.

Now, to support this claim the prosecution relies primarily on a single morcsel of evidence: Mr. Avellanet's uncorroborated testimony of a conversation with Mr. Oberman in 1965 during which Oberman is supposed to have said that Rio Rancho expected only 5 per cent of the purchasers actually to settle there.

Now, interestingly, in his report, Mr. Avellanet does not attribute the 5 per cent figure to Mr. Oberman. A very interesting thing.

Rather, he describes it as a rule of thumb. Those are his words, "a rule of thumb" of the land sales industry.

Wherever the 5 per cent figure came from, Mr. Avellanet's testimony hardly supports the assumption that the defendants intended to develop only 5 per cent of this property.

(Continued on next page.)

Mr. Avellanet testified to his understanding that the defendants intended to develop their property for as many people as came down to Rio Rancho no matter how many that might be.

In his preliminary report, which is dated November 2, 1965, Mr. Avellanet stated that he expected 14,000 dwelling units to be built at Rio Rancho by 1985. Now, that happens to be two and one half times the 4,000 families which, according to his final report, would have constituted 5 per cent of the purchasers.

Furthermore, both in his testimony and in his final report, Mr. Avellanet set forth a number of reasons why the 5 per cent industry rule of thumb may not apply to Rio Rancho.

These reasons included, among others, Rio Rancho Estates' urban location, that is, its closeness to Albuquerque, and growing trends of mobility and affluence among older people desiring to move to warmer climates.

Thus, Mr. Avellanet concluded in his report, and these are his words, not mine, these are his words -- it does not seem unreasonable to suspect high percentages after land buyers becoming home owners in the distant future. And there is plenty of evidence in the record, ladies and gentlemen of the jury, establishing that the defendants did, indeed, expect high percentages of Rio Rancho land buyers to become home owners.

For example, Mr. Musgrove, formerly the forecast supervisor or Mountain Bell Telephone Company, testified in the early 1960's, AMREP's president had expansive plans for the development of Rio Rancho. The comprehensive plan prepared by Mr. Yguado for Rio Rancho in 1963 was for the entire 54,000 acres which then comprised the development or the proposed development.

In addition, to the present building areas which you have seen, in addition to the present building areas, the company established additional core areas which could serve as future building areas in various parts of the property, and these core areas or future building areas were not only near in to the present developed areas, there are several of them which are far out and one of them in the most distant western boundary of Rio Rancho.

The intent to service future building areas with utilities and eventually to interconnect utilities between various building areas is clearly stated in the company's property report, which is Exhibit 1002 in evidence.

The report, at page 10, contains the following statement concerning plans for the distribution of water to lots on the property, and I am now quoting.

"The developer intends to cause the utility company to install additional distribution systems in the present and future building areas and to interconnect utilities between such areas as the demand arises."

So that the intent was not only to have building areas all over the property, but ultimately to interconnect them with utilities so you would have utility lines running through the property.

All of this clearly indicates that the company expected development to extend far beyond its present location.

Now, Mr. Perlmutter testified about conversations with various of the defendants when he was first employed in which they expressed a desire to go ahead and build homes and advance the community as quickly as possible.

Mr. Pierce, the executive director of the middle Rio Grande Council of Governments, testified that Rio Rancho is an associate member of his organization and in this way is able to participate in long range planning for the area.

He testified, further -- and this is very significant -- he testified further that it was reasonable to project that Rio Rancho would have a population of

50,000 people within the next 25 years, by the turn of the century.

This is a far cry from the 5 per cent figure that Mr. Avellanet mentioned.

Now, you may recall that when I spoke to you at the beginning of the trial I stated that the genius of the approach to planning at Rio Rancho was the exchange privilege, and the reason that this was such an ingenius approach was it was the means by which scattered sales could be converted into orderly and planned development.

Now, that's what I told you at the beginning of this trial.

And that is exactly the point that Mr. Avellanet made in his testimony at the trial, and I would like to read to you a portion of that testimony.

"Q In your report which you wrote, referring to Exhibit 66, didn't you describe this exchange privilege as, and I am quoting, bringing both the land sales and land development aspects together?

"I am referring to page 7 at the bottom, Ms. Hynes.

"A Yes, I did.

"Q And that among the benefits of this exchange privilege you noted at page 8 of the report that there were efficiencies to Rio Rancho and utility improvements and other improvement costs?

"A Yes.

"Q By that you meant it was a more organized and responsible manner of development, isn't that so?

"A Yes.

"Q And that urban sprawl is limited by using the exchange device?

"A Yes.

"Q And there would also be in the course of development of that community more efficiencies in the administration of government services, such as police and fire protection?

"A Yes.

"Q And you considered the exchange mechanism as a sensible development tool, didn't you?

"A Yes.

"Q You believed it to be a good idea, indeed, a neat concept?

"A Yes."

That is the testimony of the government's witness, Mr. Avellanet.

Now, you may recall that in my cross examination of Mr. Carruthers, I called his attention to a 1975 report published by the Albuquerque planning department concerning North Albuquerque Acres.

Mr. Carruthers acknowledged that the report contained a discussion of the way in which the property might be developed if it were under single ownership, that is, if it ever came under single ownership.

The approach discussed was to develop the property section by section, and the example cited for the recommended approach was none other than Rio Rancho Estates. Yet, it is precisely the exchange privilege that makes orderly section by section development at Rio Rancho possible.

Now, as I said before, Ms. Hynes in her summation played down the importance of AMREP's contract. That's understandable, since the fact that it lived up to its contract is one of the clearest indications of the company's good faith.

Time and time again during the trial you heard testimony that the company did, indeed, live up to the terms of its contract. As Miss Vivas put it, the company never failed to keep a promise it made.

In fact, the evidence establishes that the company went beyond the terms of the contract to meet the needs of its purchasers.

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Now, many contracts have been put in evidence and you will have an opportunity to review them and you will see that each is a two-page agreement within in clear English. You will also see that certain of the key provisions are printed in bold-face type.

The contract allows someone who has signed it several opportunities to back out of the deal and to back out of the deal without any penalty and for any reason whatsoever.

Since 1969, the contract has contained the following cancellation provision required by law, and I will read it to you:

"Buyer shall have the option to void this agreement if he has not received a property report prepared pursuant to the rules and regulations of the U.S. Department of Housing and Urban Development in advance or at the time of signing this agreement. Buyer shall have the right to revoke this agreement within 48 hours after signing this agreement if buyer did not receive such property report at least 48 hours before signing."

Now, since the purchasers received property reports at the dinners rather than in advance, they had 48 hours after signing the contract to cancel if that's what they wanted to do. They didn't have to give any reason, they didn't have to give any explanations, all they had to do is cancel if that's what they wanted to do.

In addition, each purchaser had the right to cancel the contract and receive a full refund from the company if he or she visited the property within six months from the date the contract was signed.

You have heard a good deal about this. And this six month refund privilege was explained to everyone who purchased at a dinner.

In fact, the podium speeches in evidence demonstrate that the dinner speaker read this section of the contract out loud as part of his regular presentation.

The prosecution's own witnesses testified to the fact that the company extended the six month cancellation privilege to accommodate their schedule.

For example, Mr. Mols, who made his first purchase in October of 1966, said that after he notified Rio Rancho that he would be unable to visit the property until his vacation in July of 1967, the company extended his cancellation privilege until that time, which means that he received a total of ten months within which to cancel.

Similarly, Mr. Seder said Rio Rancho extended his cancellation privilege for a few months.

Now, as you know, the contract has two exchange privileges. One allows the purchaser to exchange a one half acre residential lot for a lot in the building area if he or she is ready to build before utilities reach the lot to be exchanged, and the second exchange privilege allows the purchaser within five years to exchange a lot in the undeveloped area for another lot in the undeveloped area.

Whenever a purchaser chose to exercise his or her right to the second type of exchange privilege, the lot to be exchanged was assigned a value that included the appreciation in price which comparable lots had undergone during the period the property was held.

Thus, for example, Mrs. Henry testified that when she exchanged undeveloped lot in unit 13 for an undeveloped lot in unit 16, her original lot was valued $1,300 above the price she had paid for it.

Mrs. DeWitt testified that she was given credit for the appreciated value of her lots in unit 25 when she exchanged them for another group of lots in the same unit.

Similarly, lot owners always were given credit for the appreciated value of their undeveloped lots when they exchanged into the building areas. Here, too, the company went beyond its contractual obligations when, for example, purchasers wished to live in a condominium rather than build a house. Thus, Reverend Byers testified that when he purchased the condominium at Rio Rancho, he was given credit for the appreciated value of one half acre of undeveloped land that he owned.

Most striking is Mrs. Greenberg's testimony that the company would have allowed her to transfer one half acre of land at Rio Rancho for a condominium in another AMREP project located in Florida. That's how far this company was willing to go in accommodating its customers.

The contract further provides that the company will allow a purchaser to delay payments for a period of up to 60 days if the purchaser is unable to make payments as a result of illness or as a result of an emergency.

Although the contract states that as a proof of illness or emergency is required, you have heard that such extensions were made available to customers routinely and without any proof of illness and without any proof of an emergency, simply on the word and the request of the purchaser.

In fact, on a number of occasions, the company allowed more than one delay in payment for the same purchaser.

Mr. Finnen testified that he received at least two separate moratoriums on his payment.

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According to Mr. Seder, the company allowed him to go from March to September of 1972 without making a single payment. They didn't cancel him, they allowed him to do that.

In addition, although the contract contained no provision for it, the company routinely reduced monthly payments of individuals who were having difficulties in meeting their payments.

Mr. Davis testified that at his request, his monthly payments were reduced from a total of $106 to $78.

Mr. Sporzynski testified that after the company gave him a payment moratorium, it reduced his monthly payments for a period of time.

Mr. Jones testified that to help him out, the company reduced his payments on more than one occasion.

Finally, the contract provides that if a purchaser is in default for a period of 60 days, the company may cancel the contract and retain all the payments.

Again, the testimony demonstrates that the company never sought to cancel a contract if an individual was in default for only 60 days. On the contrary, you have heard instances in which the company held an account open for many months before cancelling it for failure to make payment.

Mr. Morden testified he had stopped making payments five or six months before he appeared in court to testify in this case and that as of the date of his testimony the company had still not cancelled his contract.

Mr. Gray testified that after he stopped making payment, the company made repeated efforts to give him -- to have him continue to make his payments so that he wouldn't lose his money, and cancelled his contract only after nine months had passed.

Not only did the company take actions beyond what was required by the purchase agreement for the benefit of individual purchasers, it also went beyond its contractual obligations for the benefit of the entire community.

For example, although it was not obligated to do so, for 15 years and to this very day it has maintained all common facilities at the property at the cost of about $135,000 a year. That is a lot of money over a 15-year period. They have done it and they are still doing it, and they are not obligated by their contract to do it. But they do it and it evinces their deep interest in seeing to it that Rio Rancho continues to grow and continues to develop.

Similarly, despite the fact that the company is only obliged to build roads to Sandoval County standards which do not require paving, it has paved roads in unit 10 and unit 11.

Now, all of this suggests a clear intent on the part of AMREP; not the intent to defraud charged by the prosecution, but, rather, an intent to develop an outstanding community and to treat its customers fairly and most of the time generously.

Yet, AMREP is on trial for criminal fraud and the outcome may well affect its ability to continue to help Rio Rancho grow and prosper. In a very real sense, therefore, the hopes and aspirations of the 45,000 people who have purchased land at Rio Rancho are in your hands.

His Honor will instruct you that a company, like a living human being, is entitled to a presumption of innocence and that the prosecution must prove its charge beyond a reasonable doubt. I am certain that after you have reviewed the facts and applied thelaw in accordance with his Honor's instructions, you will find that AMREP and, indeed, all of the defendants, are innocent of the charges against them.

Thank you very much.

THE COURT: Mr. Arisohn.

MR. ARISOHN: Your Honor, ladies and gentlemen, Mr. Foreman, ladies and gentlemen of the jury.

You have heard this before; let me say it again at the outset:

This is a criminal case. The stakes in this case are the highest which you can have in any lawsuit.

What is at stake here is the freedom of these people, the liberty of these people, virtually the life of the corporations.

And that's why when the stakes are as high as they are, we have certain rules that have been formed over the century to give people who are on trial, when you have those kind of stakes, the benefit of the doubt. That is why we have the rule of reasonable doubt. The prosecution must prove guilt beyond a reasonable doubt.

These people are cloaked with the presumption of innocence. As they sit there now, even as you go in the jury room as you start your deliberations, they are presumed innocent.

That's why we have rules of evidence, that's why we have courts, that's why we have judges; most important, that's why we have you. You people stand between a charge brought by the prosecution and these people and their future and their corporations and the corporation's future.

You can imagine there is a lot at stake, a lot at stake here.

The words are easy to say, presumption of innocence, reasonable doubt. They are easy to say. You have heard them since you have been children. But don't slug them off. Consider these words. Consider what they mean. Consider what protections they provide for people who are sitting in the position that these men are sitting today.

I represent one of the corporate defendants in this case, Rio Rancho Estates, Incorporated.

His Honor will instruct you and Mr. Lavinsky just mentioned because an entity is a corporation and not a live human being, it is because of that fact we are not to give any less serious attention to the guilt or innocence to the corporation. The corporation must be found guilty beyond a reasonable doubt, too.

The corporation is presumed to be innocent, too, as his Honor will instruct you.

Mr. Lavinsky said a few minutes ago that corporations have no mind and have no body and have no soul. Of course that is true.

But think back over the last two and a half months to some of the stories you heard from the witness stand. Perhaps you thought during the course of this trial that, you know, maybe these corporations aren't the kinds of corporations you have heard about in the course of your lifetime. These corporations gave away land, these corporations on trial here today gave away land so that it can prosper and build their community that they are building.

These corporations gave cut-backs and moratoriums and told people they didn't have to live up to the strict terms of their contract. You heard testimony time after time again where under the terms of the contract the person was required to make payments month after month and if he didn't do so after 60 days, that was the end of the contract, money forfeited, land taken back.

How many times did you hear from that stand that didn't happen? How many times did you hear from that stand that people were allowed to pay out over longer periods of time, that people were allowed to stop payment for a period of time and the land wasn't taken back?

It is not a corporation that is out to cheat. It is not a corporation that is out to swindle its customers. And that is the issue before you. Don't lose sight of that.

The issue before you is, is Rio Rancho, are those four men sitting there, are their corporations, have they been for 15 years engaged in a course of conduct designed to cheat and swindle its customers? That is the issue in this case.

One of the most important facts for you to bear in mind when you consider whether that charge has any validity to it and when you consider beyond a reasonable doubt they have been able to prove that is, what have these people been doing for 15 years?

They are there. They designed Rio Rancho from day one. They have been there day in and day out for 15 years. That is despite the government questionnaires, that is despite the investigation, that is despite this very case.

While they are sitting here today, their corporations are out at Rio Rancho building as they have been for 15 years. They are dedicated men, they are dedicated to the growth and development of Rio Rancho.

And that is important. That is very important, because Ms. Hynes yesterday says she has no quarrel with the community at Rio Rancho.

Well, I say she can't have any quarrel with it, because her witnesses came in here and they told you how nice it was and how happy they were.

But more importantly she says in her next breath, but don't let these men hide behind that. Remember she said it?

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Let me say at the outset, they are not hiding behind it, they are standing out in front of it because they are proud of it, because that community and what they have done for that community over the last fifteen years is the best evidence of what their intent has been, what their intent has been in the future and their dedication to the growth and development of Rio Rancho.

Let me read a paragraph of the indictment.

The indictment charges -- and his Honor will instruct you, by the way, an indictment is nothing, it means nothing, it is just a charge. If it meant anything, we wouldn't have need for juries.

The indictment charges it was a principal part of this scheme that the defendants, in order to create the false impression that they were gradually developing Rio Rancho -- that's what it is charging, that they were giving the false impression of gradually developing Rio Rancho.

You remember in Ms. Hynes' opening, she said sure Rio Rancho is developed, but it is a come on, it is a showcase, it is a developing tool. Those were her words, a showcase.

On the other hand she says, "We have no quarrel

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with Rio Rancho, we have no quarrel with the development at Rio Rancho."

Well, think of it. If these men intended to develop Rio Rancho, if these corporations that have been dedicated for fifteen years day in and day out, today as we sit here, in developing Rio Rancho, what does that say about their belief? What does that say about their intent, their understanding of what Rio Rancho is worth?

How can it be if they intend to develop Rio Rancho that they believe it is a bad investment?

How can the prosecution say if these men intend to develop Rio Rancho that they can't believe it's good?

And his Honor will instruct you that if these defendants, these men, had in their minds that they honestly believed that Rio Rancho was good, if they honestly believed what they were telling their customers that it was a good investment, then you must acquit them.

Isn't it a truism, isn't it just obvious that if land gets developed, as building goes into land, as you change raw land, as you change land that looks like this (indicating), which is Exhibit HG, and put in buildings and put in water and bring people there, isn't it just

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obvious that the value of land goes up?

And if these men intended to do that at Rio Rancho, isn't it obvious that they must have believed that Rio Rancho was good, that it was a good investment? It just follows.

And remember, the burden is not on us to prove to you that they believed it was a good investment, the burden is on the prosecution to prove beyond a reasonable doubt that they did not. And I say the most telling evidence of this is what they have done over the last fifteen years.

You can't develop a community overnight. Before you have two houses, you have to have one, and before you have 100 you have to have two and before you have 1,000 you have to have 100.

Look at what they said.

Here it is, Government's Exhibit 388, the page the prosecution never showed you in this exhibit. Look what they said.

"A community today, a city tomorrow."

What are we talking about here? We are talking about a development over a period of time. A community today, a city tomorrow.

I say that the evidence in this case is

undisputed that they have built a community at Rio Rancho, that they intend to build and continue to build and that eventually there will be a city at Rio Rancho.

Think back on Ms. Hynes' opening when you first heard it back in the early part of November. She told you, "This is a case about land fraud. This is a case about worthless desert land."

What is the image you had in your mind? Is it what you now know what Rio Rancho is or did you think of some sandy desert someplace way off in the middle of nowhere where there was nothing?

Well, take a look at what Rio Rancho looked like in 1963. This is Exhibit HE. This is just after they started building at Rio Rancho. Eleven houses. Do you see it? That's what they had at Rio Rancho in 1963. A dirt road going past the administration building.

When you get in the jury room, compare HE with HD. You will find it is the same view, it is the same shot taken some twelve or thirteen years later. Compare it. See what they have done there. Compare the two photographs.

I will leave that for you.

You heard about the charge land fraud, desert land, worthless land.

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Did you ever think you would come to learn that 7,000 people live there? Did you ever think you would come to learn that they have homes and stores and an industrial park and a clinic and shopping centers and churches and schools and banks and a move theater?

Or did you think when you heard the opening of Ms. Hynes that these men bought their land and divided it up and sold it off and skipped?

I say the evidence has proved, the cross examination of Ms. Hynes' witnesses and our witnesses, that these men were not hit and run artists. They didn't go out there and sell the land off and leave. They are dedicated, they are there today, they have been there for fifteen years and that's despite this case and despite all the publicity.

Let us look at what they have done.

You decide. Is it a showcase or is it real?

Is it because they intended to develop or is it because they wanted to create a false impression, as the prosecution has charged?

Take a look at this. This is Corrales Heights. Is that a false impression or is that real? That is HA.

Another view of Corrales Heights, a different section. False impression, fraud, crooks?

Look what they have done. Compare.

This is no small task, changing this to this. This takes years of effort, it takes planning, it takes engineers, it takes architects, it takes builders. Look at them.

Here is another section.

These are the condominiums on the golf course. You heard testimony about that.

This is a closeup of the condominium on the golf course.

This is a picture of a mobile home park at Rio Rancho.

You have heard about the Panorama Heights section where they have expensive homes. That is Panorama Heights.

Unit 7, which you heard so much about, which is up in the middle of the property, which is where they are building most recently, up in the middle of the property someplace, is a new section. Ms. Hynes complains that only four houses are there. You certainly have to have four before you have five.

The country club, golf course.

A shopping center.

Crooks? Intent to develop?

This is the other end of the shopping center: business offices.

The Lovelace Bataan Medical Center, which Mr. Carruthers testified was the best in the southwest.

You heard testimony, also, about the National Secretaries Association putting up their home there. This is their retirement home. It is in Rio Rancho.

Showcase? False impression? Does that make sense.

The Felician Sisters built their Motherhood Home there.

We come to something else which is important, the sewage plant which is at Rio Rancho.

Think of it. Mr. Pierce testified -- you remember he was the executive director of COG -- the Rio Rancho sewage plant is one of the best in the southwest, one of the best.

Would a company that is out to create a false impression set up a sewage plant which is one of the best, or does this reflect an intent to develop, an intent to keep on building? Does this reflect what is in these people's minds that they believe that Rio Rancho is good?

Most telling of all, this is a picture of the Rio Rancho office building. This is where Larry Perlmutter testified Rio Rancho moved or, rather, AMREP Corporation moved its national administrative headquarters with three hundred employees.

Does that reflect an intent to stay and develop and continue to develop? Does that reflect that it is good, that these people believe it is good? Or does that prove beyond a reasonable doubt, as the prosecution would haveyou believe, that this all is a false impression, it is a showcase? It is ridiculous.

Remember some of the testimony about how Rio Rancho has grown from nothing to what it is today.

Mr. Kearney, the fire chief in 1963 -- let me read to you some of his testimony.

He was the fire chief -- he went there for the first time in 1963. He has been the fire chief.

"Q Will you describe for his Honor and the jury the growth and development of Rio Rancho which has taken place in the thirteen to fourteen years since you first saw Rio Rancho?

"A When I first saw Rio Rancho in 1963, oh, I'd say there was only about seven or eight homes there, dirt roads, and over the years as I went back and was residing there there has been a great development in the community in regard to the number of homes that were built, the commercial area, stores, shopping centers, theatres, churches.

"We have probably five or six churches there now. So this development over those years has made me attached to the community, not just the fire department but other areas, the civic associations, and so on, the community associations, and there has been a tremendous increase in residents moving in."

And Mrs. Mellenbrook, the lady who came here from Rio Rancho and told you how she was able to sell her commercial property with a sign.

"Q Can you describe that growth and development for the jury and his Honor?

"A Yes. When we first moved there were probably as I said about twelve houses and a recreation center. Rio Rancho Inn originally had sixteen units. It now has eighty.

"Next to it now are eighty condominiums.

"There is a little vacant space and then we have our shopping center which contains grocery stores, beauty shop, barber, two banks, the Rio Rancho Administration Building and just within the last year they have added another section which has the Sheriff's Office, the only satelite of the Lovelace Bataan Clinic in New Mexico, barber shop, beauty shop.

"Across the road is a lighting plant, two restaurants. The Felician Sisters, have just built a $1 million Mother House which takes care of all the nuns from four states --

"The National Secretaries Apartment Complex had originally 104 apartments. They have added 24.

"We have an industrial park encompassing probably fifteen or twenty businesses.

"We have a beautiful country club and just around the country club there is a section of strictly custom homes in the 50, $75,000 class.

"Up at the other end of the country club they just opened up a new section of townhouses and patio homes.

"Then just above that section in 11 they have opened a bran new section of moderatley priced homes from 24,000 to maybe 30 which I think within about two months was completely sold out, about fifty homes because of a new model village they put in."

Mr. Perlmutter testified that when he came to work for thecompany in 1969, there were 485 homes at Rio Rancho. Today he testified there were 1700 homes.

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There were 1500 people in 1969 at Rio Rancho. Today he testified there were over 6500 people.

Mr. Monaco has been going to Rio Rancho since 1970. He testified he was there on fifty different tours, and based upon his personal observations of the progress at Rio Rancho, he said he meant it when he told the customers that there was fantastic growth at Rio Rancho.

Mr. Pierce, too, he keeps the records. He says that Rio Rancho has quintupled in population -- that is five times its population -- since 1970.

This of all this. This of what they have done in fifteen years.

You can't have a city built overnight. They never told that to people. What they told them was they have a community and they are going to have a city in the future.

Does this show it? Does this show what they have been thinking about for fifteen years, what they have been working towards over the last fifteen years, or is this all scotchtaped together and built up out of cardboard, a showcase, a false impression? It's ridiculous, it's nonsense.

What this shows is that this man and

corporations have been dedicated to Rio Rancho and its future growth. What this shows, the national administrative headquarters of the company at Rio Rancho.

Mr. Perlmutter told us why the company moved there. He said because AMREP was committed to Rio Rancho and its growth.

Was all this evidence entitled to no weight by you, or does it prove that these people had the intent to stay and build and continue to build? Think about it.

Now, when you are talking about intent, what did Mr. Perlmutter say about intent?

Mr. Perlmutter is the vice-president in charge of administration at AMREP Corporation, a high corporate officer, put on the stand by Ms. Hynes.

At page 3463:

"Q Did you ever have discussions with Mr. Howard Friedman with respect to what he said in words or substance that he saw a future for Rio Rancho and intended to see it develop?

"A I have heard him say that many times.

"Q That he believed in Rio Rancho?

"A Absolutely.

"Q He believed it wouldgrow?

"A Yes, sir.

"Q And he and the company were dedicated to it?

"A Yes, sir.

"Q And the same with Mr. Carity?

"A Yes, sir.

"Q And Mr. Hank Hoffman?

"A Yes, sir."

Even Mr. Avellanet testified that it was his impression when he met these people back in 1965 that they had a serious intention to build.

Ms. Hynes would have you put a lot of weight on the statement that Mr. Avellanet testified to that was made to him by Herman Oberman back in 1965 that 25 percent of the people think they will come, but only five percent do.

Ms. Hynes argued to you yesterday that that was proof that these people only intended to build for five percent.

Well, she would have you believe that all this means nothing, what was going on at Rio Rancho was that somebody was keeping track of the number of people going out there and the moment the five percent were built, the stop whistle was going to blow and everybody is going to run away from Rio Rancho, these defendants are going to pack their bags and take their administration

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building, the three hundred employees and skip.

I say that is nonsense. That is not going to happen at all.

Ms. Hynes also mentioned that the company has only ten percent of the land set aside for people who want to build at Rio Rancho. How can they intend to develop it?

Let me explain that.

Take a look at Prosecution Exhibit 885, which is a Rio Rancho inventory summary. This tells you how the acres at Rio Rancho are broken down.

First of all, of the 91,000 acres, 52,000 have been sold. 52,000 acres are owned by various people.

Another 15,490 acres of the 91,000 are devoted to roads, community facilities and other things.

But most important, platted and reserved for management, 10,420 acres.

Unplatted and reserved for management, another 5,738 acres.

Over 16,000 acres are reserved for future development at Rio Rancho, for future exchanges. That is certainly more than ten percent of the 52,000 acres which are owned by various people. But Ms. Hynes would say, you may argue to you tomorrow on rebuttal, that you don't have a lot available for every person out there to exchange into, therefore, you must not have considered that everybody was going to move out there or that every lot was going to be lived on.

Well, just remember that when you exchange in a lot to an exchanged area, you free up a lot and that when you have the core areas developed, you have lots which have been freed up near the core areas so that you can successfully and easily extend utilities to the freed up lots.

In this connection, Mr. Avellanet, as Mr. Lavinsky told you before, he said the exchange was a neat concept.

If Ms. Hynes really wanted to prove toyou that the exchange was not going to work, beyond a reasonable doubt can't work, don't you think she would have brought in a planner who would have studied it and said, "Can't work, impossible, no way"? She didn't do it because she couldn't do it.

Mr. Pierce, again, testified that there were going to be 50,000 people there. He was the one who says that Rio Rancho was part, was part of the Albuquerque area, is part of the community.

The United States government itself has

determined that Rio Rancho should be part of the census data pool, what they call the Albuquerque Standard Metropolitan Statistical Area.

He also testified about buses going back and forth between Albuquerque and Rio Rancho and it is a viable entity that has a significant impact on the Albuquerque area.

50,000 people at Rio Rancho by the year 2000. And he also says the population grows exponentially. You don't have the same number coming in every year, you have population building on population, doubling and doubling and doubling again. It accelerates.

I think the most striking evidence of what these people intend, what these people thought was that in the face of all these charges, in the face of the claim that they are a fraud, they are there today and building, you heard Mrs. Joyce Davis, who came in here and told you that she is going to have a ranchette in Unit 17 next month, and Mr. Perlmutter said since May of 1976, 187 new houses, are in one stage or another of completion.

Mrs. Linderman, who told you she could be a salesman for Rio Rancho she liked it so much, she says since June of 1975, when she moved to Corrales Heights, she saw 75 to 100 houses going up in Corrales Heights alone.

Now, what does all this show?

Is this all, all of this, can all of this be a false impression? Can all this be something which Ms. Hynes says doesn't let the defendants hide behind?

They are not hiding behind it, as I said before, they are proud of this. More importantly, this shows what they have been doing for fifteen years.

Would a fraud do all this? Would a crook do all this? It is crazy.

When you go in the jury room, think of what these people have done for fifteen years. Think of what they are doing today. Does that mean anything? Does that mean they are going to pick up and leave? Does that mean that they are dedicated to this place and want to see it grow? Does that mean that they want to see it develop? Does that mean they intend to develop it?

And if it means that, doesn't that also mean that they honestly believed that Rio Rancho was a good place, that Rio Rancho was a good investment?

How could it mean, beyond a reasonable doubt, that they thought it was bad; beyond a reasonable doubt that they thought it was a bad investment?

That's what the burden is on the government,

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beyond a reasonable doubt it was a bad investment.

This shows that this was just not the case.

When you go in the jury room, consider all this evidence. I'm sure that when you do, you will find these defendants and the corporations not guilty. Let them get back to work.

THE COURT: We will adjourn until tomorrow morning at 10:00 o'clock.

(Adjournment taken to January 19, 1976 at 10:00 o'clock a.m.)

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UNITED STATES OF AMERICA

V. 76 Cr. 644

AMREP CORPORATION, et al.

January 19, 1977
10:00 a.m.

(Trial continued.)

(In open court in the absence of the jury.)

THE COURT: I believe there is an application.

MR. KAUFMAN: The government does, your Honor.

I think we ought to give Mr. Arkin maybe a minute to settle down.

(Pause.)

THE COURT: Are you ready, Mr. Arkin?

MR. ARKIN: Yes, your Honor. I just got in. I'm sorry.

MR. KAUFMAN: The government renews its application that your Honor charge the jury with respect that filings with the New York Secretary of State's office and the other state offices does not constitute approval.

The reason why we are renewing it at this time

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is on the basis of Ms. Cross' summation.

If I may just have a minute --

THE COURT: You don't have to. I agree in view of Ms. Cross' summation there should be some mention by the court about approval.

I think Ms. Cross went way beyond what Mr. Arkin said in his summation yesterday and it is clearly her argument to the jury that this was an approval and I am going to tell the jury it is not approval.

MR. ARKIN: May I respond just briefly?

THE COURT: You may, but you have the ruling.

MR. ARKIN: Your Honor, her argument used the word "approval" only in one instance --

THE COURT: I know, but the general tenor was that this was already because they were approved.

You stayed within thebounds and I so stated before she summed up. Ms. Cross went over the bounds, and I will now give -- you may comment on it in your rebuttal to it, if you wish.

MR. ARKIN: Well, I --

THE COURT: It is not approval and the jury is going to be told that.

All you did was comply with their requirements for form, and that's what they did. They did not approve, and the government is still free to argue to the jury that the defendants are guilty of a fraud here, and the fact that an NYA number appears on any of the materials does not mean that they are not guilty and I am so going to tell the jury.

MR. ARKIN: Your Honor, just briefly, Ms. Cross, the only time, I believe, she departed from it was when she used the word approval in respect to price increases.

THE COURT: I just pointed out to you, it is not just the use of the word approval, it is the general tenor of her summation to the jury that calls for this comment by the court. It is not the use of the magic word approval, it is the general tenor.

Now, you read the transcript of what she said and you will see that it is justified for me now to give that charge.

If the defense had rested on your presentation, it would not have been given.

MR. ARKIN: Your Honor, most respectfully, we except.

THE COURT: All right.

Do you have anything?

MR. FLEMING: No. I am just a nervous wreck.

THE COURT: Sit down and compose yourself.

Bring the jury in.

(Jury present.)

THE COURT: You may proceed.

MR. FLEMING: May it please the court, Mr. Cuccia and members of the jury.

I know it has been said, and I am going to say it again, this is a federal felony criminal case, and the charge is fraud between 1961 and 1975. And his Honor will instruct you that while it is not necessary that fraud be proved for that entire period of time, that it is necessary that fraud, crookery, swindle, be proved for some substantial period of time consistent for a base of pattern during the period charged in the indictment.

Now, whether they are right or wrong is for you to decide.

All of you have been here every day that we have been here, since I think November the 3rd, more than two months ago, and you have heard the evidence, or the lack of evidence, and you may find that you can do your job, given his Honor's instructions, without more talk from a lawyer and you may find that at least one lawyer may agree with you.

But I am going to take some of your time, I hope not too much, though I'm sure as I go on it will seem like too much, because I want to review the evidence and maybe we will be able to recall together some evidence, some testimony, some atmosphere, if you will, over those two months, some feeling which you may have had about those individuals that testified on the stand, feelings which over two months necessarily can dim, refresh our recollections together as to what the testimony was and as to what the demeanor -- that is a lawyer's word for what people look like -- what the demeanor of those witnesses were when they testified, something we do every day of our lives.

Two people come in and tell us the same thing and we believe one and we don't believe the other. And really because as we have grown up we have learned to measure what we believe, what we feel is the truth by watching people, and watching people is important evidence.

If I go too long, please forgive me.

One favor. You think back to the beginning of the trial. You try to remember what you thought when you heard that this was a quote, unquote land fraud case. What you thought back then on November 3rd or 4th when Ms. Hynes opened. She said this was a case about a swindle of raw desert land. Get back to there and try to remember what you thought you would be hearing.

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Did you think you would hear about North Albuquerque Acres?

It is interesting that North Albuquerque Acres is in this case. Is that what you thought?

Property purchased, roads cut without regard to terrain, nice squares, sold, cut and run. Did you expect that?

Let me recall to your attention one little piece of evidence in this trial from one of the prosecution witnesses, a Mrs. Mohammad.

(Continued on next page.)

She went to a dinner, she was taken there by some friends who owned some Rio Rancho land and who were going to retire down there, and she bought one half acre and she testified that at first she bought for investment -- that was the -- what did you buy for?

"I bought for investment."

Then she said after a while she decided she might want to go down there and live down in New Mexico.

Later she bought a commercial lot jointly with three friends.

And that was her testimony when she was questioned by Mr. Devorkin. It's that simple.

Then there was cross examination. And you will recall at the beginning of this trial we asked you to wait for cross examination.

And we cross examined Mrs. Mohammed, and it turned out that she did not feel cheated until 1975, after this indictment was returned. She read about the indictment and she began to wonder.

You recall, you may recall -- that's why I am going through this -- she was one of the very few of the witnesses that had never gone down to Rio Rancho. She bought land, but she had never gone down. So like you, she had never seen it. Like you, she was hearing for the

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first time charges of land fraud reading about an indictment. Hadn't been there.

I usually quote my own cross examination, but I questioned her and I asked her, and this is from the transcript at page 2466:

"Am I correct that you still feel that real estate has permanent value?

"A Yes. Real estate does have permanent value.

"Q And am I correct that you feel that you or your children may well profit from your investment at Rio Rancho?"

Answer by Mrs. Mohammed who had never been down there, "If it's other than desert or marsh land."

"Q Am I correct, Mrs. Mohammed, if the land that you purchased, that is, the residential land that you purchased, is ready for family building, phone service, electricity and access to roads, that you believe it has value and you have no complaint?"

She says, "Is it on the golf course?"

The Court said, "That isn't the question."

And she said, "If the land that I purchased is ready for this, is that the question?"

"Q Family building, phone service, electricity, access to roads and is not dry desert land or marsh land

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in the middle of nowhere?"

"A Then I don't have any complaint.

"Q You have never seen Rio Rancho?

"A That's right.

"Q You now know that the one half acre which you purchased in 1969 may be exchanged when you are ready to build to an area serviced by utilities?

"A Yes.

"Is that right?

"A Yes.

"And you understand that would also be serviced by water? You would have water?

"A Yes.

"And you could build your house?

"That's correct.

"Q You understand that all now?

"A Yes, I do.

"Q And if that is true, so far as you are concerned, you are happy with your investment, if that's true?"

Poor Mrs. Mohammed, who read about an indictment and never seen Rio Rancho and then spent some time preparing for her testimony here said, "If that's true, yes."

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Now, they put her on the stand, Mr. Devorkin. Why did we have to bring that out?

Were you in the same boat when this trial started as Mrs. Mohammed, who had never seen Rio Rancho when she heard of an indictment and said, "My gosh, marsh-land, swamp."

"Q Have you heard any evidence of that? Have you heard any evidence of another North Albuquerque Acres, buy, sell, cut and run?"

I know this is repetitive, but it is this case. The land itself, range land, green, rolling; no lava, no base salt, no dynamite.

Millions of dollars poured into it in what's there, and none of it cheap, none of it decaying, no tin shacks, no cardboard homes. And they say ignore it.

There is a fable about a king in Greece, if I can pronounce his name because I am not good, Proscrutes and no one could live in his kingdom unless that person fit in his bed.

So the citizens were brought in and they were made to lay in the bed, and if they fit and they left, but if they were too short they were out of the kingdom unless they could be stretched to fit the bed, and if she were too tall they were out of the kingdom unless they could cut their legs off so that they would fit in the bed.

The Procrustean bed.

And you may find in this case that that is what we have here intellectually from this prosecution.

If a fact is too short, then stretch it. If a fact is too long, then cut off its legs. Make the facts fit the prosecution bed. And you may find also the problem is those facts keep falling out of that bed. And you may find, too, that if in a federal criminal felony case you need a Procrustean bed, there has to be a reasonable doubt.

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Ms. Hynes talked about the forty percent closing rate of Luther Schlesser . You didn't know that and I didn't know that when she mentioned forty percent.

Mr. Arkin did a lot of hard work overnight and he found that the forty percent was Luther Schlesser.

Mr. Zaknich had testified early on in the trial, in a moment which they could not have forgotten.

"Luther Schlesser was brought into the St. Louis office by one of the managers. He was hired and had gone out and sold property predicated on a price increase that was forthcoming."

"Did documentation of some sort to the extent that prices were going to be increased on the property and went out and sold existing homesite owners a great quantity of land on the basis that they would not even have to make payments."

Mr. Zaknich, who was in charge of sales, vice-president in charge of sales, the job that Dan Friedman did not take until 1971, Mr. Zaknich went on a said:

"We didn't know this."

We found it out. We fired him. We made good.

I said, "Was the same true when you had

customer complaints about salesmen that you were able to verify?

"A Yes.

"Q That was your policy?

"A Yes.

"Q AMREP's policy?

"A Yes.

"Q Dan Friedman's policy so far as he was responsible for it? .

"A Yes.

"Q Chester Carity's?

"A Yes."

That was Zaknich's testimony. That couldn't have been forgotten or maybe it could have been forgotten, but can you imagine if one of these defendants forgot a fact like that and made a representation like that?

Can you imagine that if Mr. Arkin had not done his work and found it was Luther Schlesser who had the forty percent closing rate that you might have been fooled.

Mr. Arkin is right, it is not fair. The average closing rate, one unit out of ten is the evidence in this case.

I hope there aren't any Jet fans here, but it does sound more like the New York Jets than the Green

Bay Packers, at least this year.

Why are these crooks presently building out in Unit 11? Unit 11 is about two and a half miles or so from the developed areas. They have had to stretch utilities all the way to Unit 11, two and a half miles. Telephone access, utilities, water, two and a half miles to a new core building area.

Think of that because as they stretch out to Unit 11 two and a half miles, the property right near Unit 11 can hook right into those utility lines in addition to exchanging in.

Feasibility. We are the red herrings, Ms. Hynes would have you believe.

Now, they are not doing this as saints. They are businessmen.

Is it in their business interest to develop Rio Rancho, to build houses for a profit, to sell utilities, water, electricity? Of course, they are in business. But you may find this business has done more good for more people, some of whom you saw, than lots of businesses we can talk about.

The Procrustean bed. We are going to charge a land fraud, one problem we have got is they are developing. Well, how do we get around that fact? We cut off that fact at the legs and we say, "The development was a fraud, too, because it made people who went down there and looked at the land think they were actually doing something and, therefore, buy some land or solidify the purchase they had made already."

So that gets that fact of development into that prosecution's bed.

We have got another problem, cancellation. We have got six months to cancel. They go down to visit the property, if they don't want it for any reason, they can cancel. We will charter planes so they can go down at a reduced rate and have five days, a rather pleasant time as everyone testified, and we will pay their ground costs.

So for $400 or so a man and a wife can go down to Albuquerque for four or five days, be treated very nicely, see their land and if they don't want it, cancel.

I will get back to that.

We are proving land fraud and that fact is a little too long for land fraud, too, so cut its legs off, too, and allege, oh, that was deceitful. That was a part of the fraud because when people came down, if they liked the land, they sold them more land. That is the way we will take that fact. Every act of good faith that doesn't fit in that bed, cut of its legs or stretch it, put it in the prosecutor's bed.

Well, we think you have more sense than that.

Did Ms. Hynes believe that she was going to scare us off when she said, "Don't let them hide behind development, don't let them hide behind those things." Did you think we were going to run trembling from the truth?

Do you not think in rebuttal she will get up and say, "Ah, ha, I told you, they hid behind the work that these men have done."

You may find that rather clever, take a fact and turn it on its head and then say, "Don't let them say this," and, if we say it, you say, "I knew they would say it."

You may find that rather clever. You may find it rather deceptive.

Perhaps ill-befitting; someone charged with public trust.

You may find that she has misjudged, that they have misjudged your sense of decency and fairness and common sense just as you may find that they have misjudged the decency and common sense of the people who came here from Rio Rancho to testify, witnesses for us and for Rio Rancho.

In fact, you may find just looking at those people that the lunacy of this case is apparent. You may find that really one of the great jokes, and I don't want to go through the business, I'd laugh except it is a federal criminal case," one of the great jokes in this case is that the work that has been done there is a fraud; that the ability to visit and cancel is a fraud.

Consider the logic of the claim. Thousands of acres of land were sold before there were a golf course or a shopping center or a corporate headquarters. Why didn't they run away? Why did they build a golf course, and you have seen it? Why didthey build first-rate stuff? Why weren't they cheap?

Now, they weren't cheap because they wanted to run a good development and sell it and develop it and make money off of it, of course. Is that a fraud?

These men stayed. You may find when they stayed, unlike those people at North Albuquerque Acres, that is the end of the land fraud that you might have envisioned.

Why didn't they foreclose on people, reclaim the land and sell it? They say, their business is selling land. Why didn't they just foreclose the way the banks foreclose, the way they will get your television set back; sell it again. It's easier because it wouldn't even be used, it's just land.

Every piece of promotional material, you have heard, all of this submitted to the various states. The states didn't say or put their imprimatur on that. It says right in the front, "We neither approve or disapprove the contents of this."

We are not arguing that meant the state was behind Rio Rancho. We are arguing the good faith of these people in submitting their materials to the state, the fact that they were in a regulated industry.

Ms. Hynes talks about the statement to the SEC in 1962. I want to read it to you and I want you to listen to it, she says this is so important.

"The basis for the company's interest in this property," that is Rio Rancho, "is that Albuquerque has experienced rapid growth in recent years," this was made in 1962. "According to data published by the United States Bureau of the Census, its population has grown from 97,000 in 1950 to 201,000 in 1960 while the population of metropolitan Albuquerque has grown from 146,000 to 262,000 in the same ten year period.

"In recent years numerous homes have been erected between Albuquerque and the property."

I don't know if that was read to you. A large development of medium and higher-priced homes presently is being erected in the area between the city and the property. The northern line of such development adjoins the property on the south for approximately six miles" and then we come to a line that Ms. Hynes relies on:

"The company does not, of course, know," -- in 1962 -- "what growth, if any, Albuquerque will experience in the future."

Of course they don't know, which is why this case is about opinions, projections. "Or whether any such growth" -- to know, don't know -- "whether any such growth will benefit the company."

How can anyone in 1962 have actual knowledge of something that hasn't happened yet, and that is what they are saying to the Securities and Exchange Commission and it is perfectly accurate.

As Mr. Arkin said, Mr. Yguado's report came a year later and this company began to predict. All the population figures from everbody down there, they began to say, this is the projected population and

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experts say that Albuquerque's growth is predetermined, that the direction of Albuquerque's growth is predetermined, a prediction.

Another thing, like Miss Mohammed, remember the FHA man, Mr. Arkin talked about Mr. Neiswander, the FHA man. WhenRio Rancho first got out there they wouldn't go in there and appraise. Now they do, 54 or $5500 a building lot.

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There was something interesting about Mr. Graham in this regard, too. Mr. Graham came on and he testified that when Rio Rancho first got there the bank would not lend money to Rio Rancho. It was not ready to give mortgage money to Rio Rancho.

Now, I don't recal what words he put it in, but it was clear.

You may find what he was saying is, how did the bank know when Rio Rancho started, just as how could the FHA know when Rio Rancho started whether these people intended to stay? Of course, a bank is not going to risk its money with people who are going to run away from that development.

Then, like the FHA, Mr. Graham testified by 1969 the bank was becoming convinced that these people meant it. They began to lend money and they are even more convinced now. This is dollars. This is $14 million the bank has put into homes at Rio Rancho. The only collateral that bank has is that house and that piece of land and if the people who own the house and the piece of land can't pay the mortgage, the bank has to take that piece of land and that house and get their money back out of that piece of land and house. We all know how that works.

This bank put it right on the table. You may read Mr. Graham as saying, we were suspicious, like we are suspicious of anyone, until they convinced us and now we are lending 95 percent mortgage money.

Suspicious like Mrs. Mohammed until she found out what the truth was on cross examination. Perhaps suspicious like you may have been when you heard that land fraud was charged.

Not only $14 million in Rio Rancho at risk, when a bank gives 95 percent of a mortgage, I think we all know they don't think there is much of a risk in terms of value. The bank is now on the west side with Dale Bellamah, the acknowledged building genius in Albuquerque, in a joint venture below Rio Rancho.

When you consider land fraud, you consider that virtually every one of the purchasers bought the land sight unseen. They called a number of purchasers and we called some purchasers. With really one or two exceptions, when those people went down and looked at Rio Rancho on their inspection-cancellation tour, when they went down to look at it to see whether they wanted to keep it or not -- they had been presented with something at a dinner party, we will get to that -- virtually without exception when they went down there they all said, "It was just what

I expected to see based upon what I had seen and what I had been told."

You mav find that to be quite remarkable. That is what is interesting about this case. This visual inspection, the ability to with your own eyes verify whether at a dinner in New York or Indiana, New Jersey, wherever it may be, you have been misled. They all came down and cirtually without exception they said, "Just what I expected."

There was one exception you may recall was Mrs. Henry. Do you remember Mrs. Henry? She was the second witness in the case. She came out, as I recall, you may recall she had a red dress, she acted, you may find, rather queenly. You may have found that she was coming to put these crooks in jail. You might find, just as a sideline, to maybe get her money back.

Part of her testimony, she was so friendly with everybody at Rio Rancho, you remember. She called her sales lady "Shirley." They were always on the phone together. She has been to Albuquerque several times. She reaily loved it, inte ested in moving down there. Bought the land, she said, because her husband had had a heart attack. She was afraid he was going to die and she wanted to secure the future for her children. That was her direct examination.

She got down to Rio Rancho and it was just terrible, it was all desert, you may recall her testimony. You may recall she said, "They had to brush the dust off the stake on the lot."

Really rubbing it in a little bit. That was Mrs. Henry in the red dress.

We had a little cross examination the first day of the trial. She signed a visitation form that said she was satisfied and she bought more property while she was there.

More than that, Mrs. Henry, the female archangel, comes to court, she had a husband who had had a serious heart attack, she testified that doctors had said her husband would probably die, and she took out the insurance that went with the land on her husband. Do you remember that? She never told the company.

You had to wait until cross examination to hear that. Remember this thing where you could have someone sign as the insured person and then if that person died, you got the land with no more payments. Mrs. Henry, queenly Mrs. Henry, who bought the land because she had been told her husband was going to die, insured him and we found that out on cross examination.

Mrs. Henry, whose only life was her children. It ended up she has a son at the University of New Mexico. You would have thought she knew everything about her children and on cross examination you found out a couple of things.

She didn't know whether her son had registered at the University of New Mexico as a resident of the State of New Mexico and she didn't know if the University of New Mexico, a state university, gave a substantial tuition break, reduction, to residents of the state. She knew everything about her children but she didn't know those two things.

I am going to indulge in the obvious and I apologize for it. This contract, single piece of paper, two sides, told you the acreage, told you the unit, told you the lot, all accurate, told you the price, told you the amount of interest, told you the number of payments, exactly what you had to pay and when.

You may find you wish you got that good a deal from the guy that sells you the refrigerator.

Required initials for the receipt of the property reports. In blue letters, "Refund privilege." Talk about the contracts being hidden or not and that all broke down, you recall, because somebody got up and testified, "We used to hold up that contract from the podium to talk about that refund privilege and we used to tell the salesmen, give the customers the contract" --

Of course they were selling the refund privilege. Of course it was selling, but they showed them the contract right in the middle of the podium speech.

Dan Friedman, the big crook, he was an administrator you may recall the testimony until 1971. This manual: "Lighting: Rooms must have adequate lighting. People must be able to read the literature, the contracts."

Nick Masone was walking around in the dark or so he said until cross examination.

There is the contract and then the phrase, "No oral modification," clear as day.

Exchange privilege and the refund privilege. They have got a little problem because they have got a simple contract, so what do they do with their Procrustean bed? Turn that into a fraud, too.

Remember early on in Ms. Hynes' summation and in the early testimony, this intuition, this intimation, it was a great fraud, an abuse of the contract. They would fill out the contract before the person agreed to purchase the land. Remember that? Take yourself way back, that was early on, and that was true.

Mr. Lederman testified, a[illegible] I went up and he went through it, and he said, "Of course we did that." Just like a salesman does to tell them exactly what they were buying and exactly what they would have to pay and when.

We never again from that time forward in this trial heard about the high pressure abuse of the contract by filling it out before the people agreed to buy it. We never again heard it and we didn't hear it in summation. Another feather,plucked, gone.

The holds. Remember the holds? They would create the sense of urgency and that lasted about a week in this trial until it became very clear by everyone's testimony, including the testimony of their witnesses, which I will read to you, that a hold meant you didn't want to sell the property twice and the people understood that. We haven't heard very much about holds since then.

Then, of course, there was that period of time when no one who appeared on that stand had read the contract. Skimmed it, didn't read it and that kind of drifted away.

Of course, they had all initialed for property reports, but they didn't know what they had initialed for.

ojw

That kind of drifted away, one, because it was so patently incredible; two, because it was established it was company policy to tell them what they were getting; and, three, because it established that, in fact, these people initialed, who on direct examination said they hadn't received it, it turned out on cross they had.

You remember the dental surgeon, Mr. Guerra. He had initialed, but he didn't remember receiving the property report. We had cross examination and I showed him the resale disclaimer in the property report and he was an honest man, he said, "That's right, now I remember I did get it." He said,"I sure am a lousy lawyer, he said, you remember.

So, initialing for the property reports under some kind of deception, that's fallen away, too.

This case began with falling away, falling away so far that Ms. Hynes now told you that the property reports don't mean anything anyway. That is what she said in her summation.

I am quoting from the transcript at page 22 and you can believe that page 22 was a long time ago in this trial. This was her opening statement:

"These property reports had important information which was not included in the sales presentations."

That was her prosecution bed when she began, and when this business about "I initialed, but I didn't know what I was getting" fell away, another piece of nonsense.

Come back to summation and now they don't mean anything. Rather than containing important information, Ms. Hynes says they are confusing and uninformative.

Well, maybe Ms. Hynes ought to write her Congressman or ought to write HUD, the Housing and Urban Development, and try to get the report her way.

But the important thing is what happened to the importance of those property reports during the course of this trial? They contained important information, it was said in the opening, and then it was proved that these people got it and now they are unimportant and they are confusing and when it says, "Land is a speculation," the ordinary human being cannot understand that. It is sheer nonsense. It's the prosecution's bed.

Now, this refund privilege, I want to take some time on this.

You may find it bears on so many of the issues in this case. It bears on the good faith of these defendants, we submit, but it bears also upon the presentation of the product, if I can call it that. It is a part of the sales presentation, you may find, because it allowed people to go out and look at exactly what they were buying.

Now, the visitation and cancellation privilege was announced from the podium. They were told, "Pick up your contracts." It was stressed in the film, you saw that. It was emphasized in blue on the contract. By the way, every witness in this case finally admitted they knew they were buying raw land. They knew of the exchange privilege. Every witness knew of the refund privilege. If you visited the property within six months, you could cancel, no ifs, no ands, no buts.

You go down on a chartered flight, you had to pay your way, it was at a reduced rate, because it was a chartered flight. You were down there four or five days, everybody seemed to have a good time, part of the fraud.

They paid all the ground costs. If you decided to keep your property, then you got your plane fare back as the last payment or payments on your land. If you decided not to keep your property, you were out the 400 bucks, but you had had four or five days in Albuquerque and that is about what it came down to.

They turned it around and say it is a part of the fraud.

Consider the sense of that. If the sales dinners were high pressure, deceptive, designed to mislead and deceive, would these men encourage visitation, visitation to the property they were selling? The only way you could cancel was if you came down and visited. Wouldn't it be better to say, "Give you thirty days to cancel."

Suppose you had a crook who was selling stock, common stock, shares in an empty gold mine. Do you think he would say, "Look, buy the stock and I will take it back if you come out and look at the empty gold mine."

Suppose you had somebody that was selling stock or was selling a factory in Canada, and he said, "You sign here. Now you own that factory. The only way you can get out of that contract is to come up and look at that factory," an old broken down, ratty factory.

Does it make any sense? By the way, we will underwrite your expenses and give you credit if, in fact, you keep your land.

How would you like to buy a car that way?

How would you like to walk in to your Ford salesman and he says, "Look, come on out to Detroit, we will pay your room and board, you got to pay your plane fare, but we will pay your room and board. We will take you to the assembly line, you can pick out your car and follow it right through. See them put that door on, that fender on, everything.

"If you don't want it, you don't have to take it, cancel it.

"If you do, we will credit your plane fare to the car. We might even show you Cadillac. Maybe you would rather have that."

It's foolishness.

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Now, it is their position that the visits were actually encouraged so that people would buy more land.

I will accept that for the purpose of the argument.

The only reason this company encouraged the visitation and coupled it with the right to cancel was so people would buy more land.

But this about that.

Go back to the empty gold mine. Are you going to sell more shares in the gold mine if you show them the empty gold mine?

If you take them at their best argument, or the worst argument, that this was a matter of fraud, too, what does it prove?

It proves that these people were so confident of their product, so confident of the beauty of what they had done and of the land that they were selling and of Albuquerque, so confident of the representations they had made in New York that they wanted people to come out and test those representations, to look at that property, to look at that development to see exactly what was there. They might cancel and they might buy more land.

Taking the prosecution's prosecutorial view, isn't that whatyou come out with?

It's lunacy.

What was the real result?

The people that went saw the exact piece of lan they had purchased. No one has disputed that. They stood on it.

Perhaps more importantly, they saw the develope area, they saw its quality, or lack of quality, what they could exchange into and expect. Maybe even more important, they saw precisely where their land was in relation to the developed property.

You recall the testimony, "It took me 20 minutes to reach my land."

So they knew exactly where their property was in relation to the development, they could see the development.

They could also see Albuquerque. They could see from Rio Rancho Albuquerque in the valley. They could see for themselves whether it was right next doo or whether it was down the valley, what was in between.

They went up on the tramway, they could look out, they could see the land.

They knew that Rio Rancho had started in 1961. It was in the property reports. They could see how much it had developed during the period of time by the time they got there. They could judge for themselves.

Now, you may find that fact, they were encouraged to visit, they could cancel if they visited, that when they got there they saw it and could measure and judge against the representations that had been made to them that that destroys this case of fraud. And it may explain to you why the government has tried so hard to throw up a smoke screen which finally blew away.

You remember at the beginning of this trial everybody was really a prisoner; kept them down at the Holiday Inn, never gave them any time to themselves, wouldn't let them rent a car, create the impression that no one could really find out anything while they were there.

You remember I asked Mr. Masone, "Well, didn't you have a problem if you kept them in the Holiday Inn they could see Albuquerque and if you kept them at Panorama Inn they could see the property and you didn't really know what to do?"

Then, of course, witness after witness after witness after witness and the statistics of Mr. Perlmutter showed everybody stayed at the Panorama Inn unless they couldn't and that was only a small percentage.

You remember they put Miss McCorkle on the stand. This was a woman who had seen an ad for a woman 25 to 45, attractive, and got the job at Rio Rancho. She said, Irv

Roth sprinkled arrowheads and false cactus out on the property.

She made a point of saying on her oath that they always took the tours from the airport up to Rio Rancho on the east side of the river. Do you remember that? They always took them up on the east side of the river because they didn't want them to see the vacant land.

The government is trying to get around this visitation, and witness after witness got on the stand and said they went up Coors Boulevard. And that fell away.

Fell away so much, Mr. Morden, one of the purchasers, got on the stand, he apparently was so prepared for the questioning that he said, without even being questioned, "We want prisoners, if that's what you mean."

He said, "Sure, we drove through Albuquerque."

I said, did they let you look out the window?

He said, "Sure."

"Did you see any vacant land?"

He said, "Sure. I saw tractors working on vacant land in Albuquerque."

I asked him, "Did anybody tell you the Indians owned that land?"

I mean, it was a joke, he was a prisoner.

As Mr. Masone said, "Well, we didn't tuck them in at night."

As it finally developed when Judge Metzner asked Mr. Masone the question, the only time there was control, quote unquote, was on the bus together. The people had three and four hour segments every day.

Mr. Frappier, he didn't go to the tram, he went down and got a job.

The policeman, Mr. Finnerty, the same thing.

What are we talking about?

And that falls away.

And you may find in their efforts to get around this fact of visitation, physical view of the developed area, of the raw land, of the relation to Albuquerque, of the relationship of your land to the developed area, seeing everything against the representations and their attempt to get around that more deception, every tour up the east side, nonsense. Tours downtown to the Holiday Inn? Nonsense. Couldn't rent a car? Nonsense. It all fell away.

What are they going to say?

They are going to say, "Oh, well, the one thing they couldn't see was the absence of a resale market."

Maybe that's what Ms. Hynes will say.

Well, you are common sense people. If you are out there, you see vacant land, you see the relationship between Albuquerque and Rio Rancho and where your property is and you are on the tram and you see the whole area and vista, you can make your own judgmnet and for ten cents, you can call a realtor. I didn't hear that they tapped the telephones or pulled out the wires.

Catch 22? Yossarian, he was a bomber pilot and he was driven really insane by fear of flying after 40 missions and he wanted to stop, he wanted to quit, he was frightened. But there was a catch.

Anyone who is afraid to fly a bombing mission obviously is sane and, therefore, will fly. Anyone who is not afraid to fly a bombing mission obviously is insane and, therefore, will not fly.

So poor Yossarian, because he had a nervous breakdown, was found sane and had to fly more missions.

Catch 22.

What should they have done?

If we don't develop like North Albuquerque Acres, if we cut and run, they are thieves. If we do develop, we are thieves.

If we don't allow them down to look at the property and cancel if they want to, we are hiding something. If we do allow them to go down to the property and cancel if they want to, we are commiting fraud.

What in the Lord's name, how are these men to run their business?

It really is such nonsense.

Why must they stoop to that type of lunacy -- I use that word -- if there is a case of fraud here?

Bank robbery. Prove it. Why this distortion, double thing, Catch 22? Standing with a calculator trying to punch out enough acres or enough density or maybe enough dynamite for the basalt so that they can prove that Mr. Yguado is wrong, a criminal case.

Ask yourselves when you deliberate where the deception lies, in the dinner parties or in here.

Mr. Arkin reviewed the evidence, the policy of this company.

Mandel was vice president in charge of sales for two or three years, knew of the scripts, not indicted, testified.

Zaknich, in charge two or three years, not indicted, testified as a prosecution witness.

Mr. Lederman testified as a prosecution witness; Mr. Perlmutter.

They believed in the company and they testified to the good faith of the company.

Now, Ms. Cross talked about Mr. Monaco and I wanted to repeat it because it seemed to me an important comment.

Geller had talked him into or some persuasion, they were stealing from the customers and stealing from the company at the same time and the company turned Monaco in as obviously it had to and Monaco was prosecuted and pleaded guilty to a federal crime, not having to do with the sale of land but having to do with his own conduct.

Now, Monaco, you would find, had every reason to be vengeful, every reason to be biased, every reason to want to get these defendants, that's just human nature, and he did.

And you may take your hat off to the truth, but surely that is a mark of the truth.

Compare him to Mr. Masone. Mr. Masone got immunity. He said he was willing to volunteer, but he paid $700 to a lawyer.

I said, "Wouldn't it have been cheaper just to drive in from Long Island?"

He paid $700 to a lawyer and got his deal, got immunity, and he testified. And he testified about putting the property reports under the sugar bowls. Do you remember? And then he put them under the napkins. That kind of fell away.

I asked him, "How big are the sugar bowls?"

He said, "I don't know. How big are sugar bowls?"

I asked him if it wasn't true that there would be more than one couple at his table.

Yes.

He testified he would take the contract away from people.

I said, "There was a closing table, wasn't there, and each couple would have a contract and you would take one couple to a closing table. When you took the one couple to the closing table, did you take the contract away from the other couple so they couldn't read it while you were away?"

And he said, "Yes."

And I asked him, "Wasn't that a little suspicious?"

Then he said, "Maybe I didn't."

Then finally he said maybe I didn't.

I asked him maybe that was suspicious, and he agreed maybe that was suspicious.

He talked about hiding the property reports in 1974, and then when it was pointed out to him that receipts were signed starting in 1972, he said, "Well, I guess that's right. I guess I only hid the property reports under the sugar bowls from July of 1971 until March of 1972."

That was Mr. Masone.

Your Honor, would this be an appropriate place for about a five minute recess?

THE COURT: Yes.

(Recess.)

THE COURT: You may proceed.

MR. FLEMING: What, then, is left of this case?

Before I get to that, one point.

Ms. Hynes has talked about they paid $178 in 1961 for the raw land and they paid $180 for the raw land, so where is the increase in value?

I think you all understand that. When they bought the raw land the exchange right attached. It wasn't raw land.

The person going off and buying an acre of land from Mr. King in 1969, buying a half acre, had no right to exchange that half acre into Rio Rancho, until Rio Rancho bought that land and then they had the right to exchange it into a developed area unless utilities reached that lot.

I don't think you are going to be confused by $178 and $180.

We are left with two things after all the sound and fury. The first allegation that this land was sold as a good investment when, in fact, it was not, and the second that Albuquerque's direction of growth was misrepresented.

The land was sold at dinner parties. There were a couple of speeches, there were movies, which you have seen, there was literature, which you have seen, and there was a visitation.

I think it is fair to say you consider that as a whole.

I think you may find that what they were saying at the dinner parties, you put it all together, this is good land, it is developable land, it is raw land with an exchange right, it is ideal for living, it is located in the path of growth of Albuquerque, a growing sun belt city, it is a wonderful place to live and its value, we believe, will increase.

Now, we weren't there at the dinner parties. You may find that one way of determining what was sold was to examine what was bought.

You may find that one way to analyze or understand the thrust of those dinners and what was being sold at the dinners, Ms. Hynes says ready resale, is to analyze the results of the dinners.

Now, these dinners were not directed at gullible people. You recall the testimony, they were directed at middle income people. Rubin Donnelly would assemble lists based on income and the range of income rose as the years went by -- inflation rose, really -- and the invitation was sent out to middle income people.

Most didn't come. Those that came, about one out of ten bought.

Now, Ms. Hynes read a line, "The word investment, incidentally, brings me to the main reason for my being here this evening, because what we are presenting tonight, ladies and gentlemen, is a land investment program," and then she stopped.

I am reading from Exhibit 316. This is a 1966 script.

The script goes on and says, "-- land investment program. I say that regardless of what your own personal aim in life is, whether you are thinking of retirement or a vacation home or you want to own a pice of the good earth that some day could belong to your grandchildren, this evening you have the opportunity of participating in a land investment program to help assure yourselves of the advantages that you are now just dreaming about, an ideal way to assure your children or grandchildren a valuable estate that could take care of their college education and provide them many needs."

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Life at Rio Rancho, long term investment you may find.

They also talked about making money.

What does "investment" mean? You may find that when you buy a pice of stock, IBM stock, and you put it in a safe deposit box and you forget about it, you are investing.

You may find that when your stock broker calls and says, "I think we can make a little money on XYZ Corporation," and you buy it with a view to reselling it quickly, you are speculating.

I think you may find from your own experience that when you buy a home to live in you are investing. You are investing in a home to live in and you hope you are investing in a home which when the time comes when you may not be able for some reason to live there again, you will be able to get your money out when you resell it. You are investing in life and in a piece of property.

You may find that some people buy homes and never live in them and speculate hoping the price will go up and they can resell it.

One is investment and one is speculation.

You may find in this case the prosecution has done something to the word "investment," because they have taken that word and they have turned it into speculation.

Their arguments of ready resale amount to nothing more than a claim that the land was sold as a speculation and not as an investment. A place to live, a place for your grandchildren, a place, maybe, to make some money.

The property reports said, real estate is not a speculation, it shouldn't be bought as a speculation. It is not liquid. We all know that. The nature of land itself is not liquid.

Mr. Davis, one of the supposed victim purchasers, turned out on cross examination, he owned about 12 acres down on the shore of Long Island. He has owned it for years. He won't let go of it now.

Mr. Switt, his father bought some land down in Flemington, New Jersey in 1920. He bought some more contiguous land in 1941 and in 1965 he made $137,000 on it. His wife got on and said, he was wrong, we lost all in bankruptcy. I don't know, you make up your mind on who is right about that.

The principle is the same and we all recognize that land is illiquid by its very nature.

The visit to the property with the view, which I have described, was part of the presentation. So you may find two things: anyone who purchased Rio Rancho land for a quick profit wasn't listening, wasn't looking at the film, wasn't asking any questions, just like that lawyer Miss Quinn talked about, can I make quick money on it and the salesman said no and the lawyer left.

On the statistics of Rio Rancho you will find that really barely no one did what the prosecution claims and that is take the program to be one to invest for immediate money.

Now, Ms. Hynes wanted to convince you otherwise. She read from Exhibit 315, this is a 1965 script and it does contain the language she read.

A fellow named Lou Koniecki, he is talking at the Casa Bella in Brooklyn. The city is now ready to come in to Rio Rancho Estates. That's what Ms. Hynes read to you.

Now, we are ready for Albuquerque. Albuquerque is ready to fall right into Rio Rancho Estates.

That's what she read to you.

Appreciate 25 per cent in a year is what she read to you.

Your investment has resale value because I tell you right now 18 months from today you will not be able to buy it for less because we will have sold it all out. People like yourselves will be in the resale market.

That's what she read to you. She said, see, they were selling resale.

Now, this is a 1965 script. I want to read you some testimony.

The language which I have just read from this script, which Ms. Hynes read to you in saying that this company was selling for resale, was never repeated in any other script. Let me read some testimony about this script.

Mr. Mandel, way back, and maybe that's why it is necessary to take your time because I couldn't remember it until I read it, talking about Exhibit 315: "To my knowledge it sounds like the first script used."

Judge Metzner: "For how long a period of time was that used at dinner parties?

"It was probably updated within a six-month or a four-month period.

"THE COURT: For that four-month period, would that have been the only script that was used?

"A To my knowledge, yes."

Now, I am sorry, but I have got to say it, Ms. Hynes didn't tell you that. Four months in 1964 and that language that she read never appeared in any other script or any other film or any other promotional literature.

Send them to jail.

Ms. Hynes said to you, this case is about people who bought land as an investment. This case is about people who bought land as an investment for resale at a profit. That's what she said.

Primary purpose of purchase was financial investment to sell at a profit. That's what she said.

All right, if this case is about people who bought land as an investment for resale at a profit, primary purpose of purchase was investment to sell at a profit,it wasn't a very successful scheme because here are the facts and they are statistics and they are important.

57 per cent of the people who bought Rio Rancho land to 1975, 57 per cent bought one lot, identified by Ms. Hynes in her opening as a half an acre. The average cost, and you can do the division to check my division, they never checked Mr. Yguado's, they never checked his arithmetic, you can check mine. 57 per cent bought one lot, a half an acre at an average cost of $2600.

27 per cent bought two lots, two half acres, at an average total cost of $5,000.

84 per cent of the purchasers in this fraud, this Green Bay Packers, bought two lots or less and the great

majority of those bought only half an acre. That's a fact.

You go down the list, you have got nothing left after four lots.

Now, they said in their summation, well, it was okay for Mr. Frappier, he bought two lots. He built on one and now he is going to sell his house for a $40,000 profit and build on the other.

It's all right for Chief Kearney because he bought two half acre lots. He is living on one and his son is going to come down and live on the other. That's 84 per cent of the purchasers.

You may find that that tells you more about the dinners than anything else in this case, the supposed high pressure.

If a grocer is selling fruit and 84 per cent buy oranges, I hope I get a laugh, you may find that that grocer is not pushing grapes. That's what we have got here, 84 per cent bought oranges.

If there was a scheme to defraud, shouldn't those statistics be reversed? If there were a scheme to load people up with worthless land, shouldn't those statistics be reversed?

The witnesses that came and testified for the defense bought Rio Rancho. They went to the same dinners. They claimed no deceit.

Mrs. Davis testified when asked if she felt cheated, she said, how could I feel cheated when all I have done is gained?

Who represents the true class of purchasers of Rio Rancho land? Our witnesses, the 84 per cent who bought -- the 57 per cent who bought a half acre and the additional 27 who bought two half acres, their witnesses or ours? Doesn't that dispose of this case?

Then go even to their witnesses representing a miniscule fraction of the purchasers. Were they really buying for resale?

Did Ms. Hynes tell you that of all of the purchasers she called, all of them, only a single one, Mr. Seder, said that he had been told he could resell quickly. Her witnesses.

Then Mr. Arkin and I will get to that.

Ask yourselves why it was that these people were buying for quick resale, speculating in land, deceived by this company. Why was it that in almost every case the married couples went down to Albuquerque? You may find that maybe they went down to Albuquerque because what they were thinking about was moving down to Albuquerque and the husband wanted to see if his wife liked it and the wife wanted to see if her husband liked it. Were they going down to check out the investment potential?

Their witnesses. Miss Hampe, she was the very first witness. She bought from her postman. She said that she didn't know the property was so big. We showed her Exhibit A, the first exhibit in the case, that big orange map, and the mileage is laid out on the property. All you have to do is multiply X by Y and you know how big the property is and she got that map from her postman. They didn't conceal the size of the property. The mileage is right on the map.

I have talked about Mrs. Henry.

Leon Fox, do you remember Leon Fox? He came in and he said he bought it as a speculation. Someone asked him, the prosecutor, and he said, RWhat did you buy for?"

And he said, "Speculation," and the prosecutor alsmot choked.

Mr. Fox said they wouldn't let them read his contract and Mr. Sprizzo said, "Did that make you suspicious, Mr. Fox?"

He said, "As a matter of fact, it did."

He also said he didn't believe salesmen anyway. He said that when Mr. Sprizzo said, "Do you believe salesmen?"

And Mr. Fox said, "No." I don't know if you remember Mr. Fox.

Mr. Finnen. He is a college educated engineer, a victim, over-reached, high-pressured, Green Bay Packers ran right over him.

'Why did you buy it?

"I bought it for investment."

I can't read it. On cross examination he said he bought for investment. What happened on cross examination? It happens that his in-laws, his wife's mother and father bought a piece of land, too, and they all went down to Albuquerque together to check their investment. When they got down there his mother-in-law complained. You know what she complained about, if you can recall it, she complained that the in-law's lot was not facing the Finnens' lot. That's got a [illegible]t to do with ready resale. It's got an awful lot to do with relocation and Mr. Finnen agreed subsequently that, yes, he was thinking about going down and living in Rio Rancho.

Mr. Finnerty was a New York policeman. Now, I haven't met -- I will take that back -- you may not have met many gullible, soft New York policement who are run over by high pressure salesmanship. He is a cop.

He bought for retirement and investment. He went to Albuquerque and he liked it so much you recall he went down to the Albuquerque Police Department. Masone didn't have the chance on Mr. Finnerty.

He skipped the tram and he went down and applied for a job at the Albuquerque P.D. He got a job at the Albuquerque Police Department. He was going to take a cut in pay and he came back and reconsidered because he would have had to give up his pension rights. He was going to move.

Then this indictment was returned and he stopped paying on his land.

Mrs. Greenberg. Do you remember her? She was very hard of hearing, we had to stand up right next to her. Nice woman.

She and her husband go to Florida every winter. Another victim.

She said she bought for investment.

Cross examination,a letter she wrote to Rio Rancho. No longer able to move from New York because she had had an operation.

What does that mean, no longer able to move from New York?

Another letter, could I trade half acre in Rio

Rancho against a condominium in Silver Springs because maybe I could move to Florida.

Mrs. Greenberg.

Dr. Reyes-Guerra. He is a dental surgeon, he makes $50,000 a year. He's got a $75,000 home in Tuckahoe. A gullible man? He said he bought it for a summer place. He was the one who initialed for the property report and couldn't remember it and then said, that's right, I did receive it. He had a lousy lawyer like my clients.

Mr. Gray was an airline pilot. Remember Mr. Gray? Mr. Gray was the guy who could get a suit made and then give it back any time he wanted to. He made $40,000 a year. He went to Albuquerque on his own. He rented a car. He drove all around Albuquerque. He was very impressed with the area he said.

He bought more property he said on his own initiative. Went in and talked to the salesman and said I want some more property. He stayed at the Panorama Inn. He had no problems with his investment he admitted until he received the prosecutor's questionnaire. Then he went to see his lawyer.

TUen he comes in here and says, they told me I could give the property back any time I wanted to and get my money back. That's what my tailor does. A good life for Mr. Gray.

Harriet James. Do you remember Harriet James? She moved to Rio Rancho. She loved Rio Rancho. They gave her a job down there. Within a year she violated her trust because she stole some land off the computer. Do you remember that?

She stole the land off the computer and they had to fire her. She wasn't damaged very much. She doesn't remember how her unemployment compensation came out, but she was able to sell her house, which she had lived in for a couple of years, for a $12,000 profit, putting it on the market for three months, a house at Rio Rancho. Don't forget that was mortgaged so she made even more on her money. Evidence of value.

She denied that she had stolen the property. She said she had some kind of agreement, contract with some land owner that she had arranged by telephone.

I asked -- Mr. Devorkin got up on redirect and he said, you have been very busy the last few days and you forgot your papers and she said yes.

"Q Did Mr. Devorkin ask you to write your husband and have your husband send the materials in before you testified?

"A I called my husband."

I said:

"Q Did Mr. Devorkin ask you to call or write your husband and have your husband mail the materials in?

"A Yes.

"Q You made the call?

"A Yes.

"Q Where are the documents?"

This is way back. Miss James says, "I can't do anything about the U.S. mail." I said:

"Q Okay, they are on their way?

"A Yes."

I haven't seen them yet. There are a lot of documents lying around here. She stole the property, she was fired and she walked away from Rio Rancho with a $12,000 profit selling her house. It's a lousy, worthless investment.

(Continued on next page.)

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Mr. Morden, Mr. Morden purchased when he was forty, he purchased for his old age. And they were selling ready resale? He was forty

He stopped making payments only when he heard about the indictment. And he was the fellow who was a lay witness, and I want to read this to you:

"Then you went down there in 1971?

"Right.

"You were actually there in New Mexico?

"Yes, sir.

"At Rio Rancho?

"Yes.

"Q And they took you on a tour?

"A Yes.

"Q They let you look out the windows of the car?

"A Yes.

"Q They treated you --" and he broke in

"A I was not a prisoner."

He volunteered it.

"Q You bought more land?

"A Yes, I bought more land.

"Q Did you testify in 1968, when you purchased the property you purchased it for your old age?

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"A Right.

"Q In 1968 you were forty.

"You were forty years old when you purchased it in 1968 and you purchased it for your old age?

"A Right.

"Q You testified when you were in Albuquerque on the trip, they took you around the city of Albuquerque, is that right?

"A Right.

"Q Did you see vacant lots?

"A Yes.

"Q Did anyone tell you the Indians owns those lots?

"A In the city?

"Q The city, yes.

"A I don't recall in the city.

"Q Did you ask any questions about vacant lots in the city?

"A How do you describe the city? In the metropolitan area?

"Q In the metropolitan area.

"A We were passing the city, that's it.

"Q Did you see vacant lots in the metropolitan area?

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"A Yes, we saw vacant lots. There were tractors working cleaning and everything. What did it have to do with me?"

"Q You say you stopped paying on your property or some of your property about four or five months ago?

"A Yes.

"Q Is that when you heard about the indictment in this case?

"A Right."

Mrs. DeWitt, do you remember Mrs. DeWitt? She got on and she testified she worked as a financial consultant giving financial advice. her sister is a public accountant. She testified she earned $12,000, $13,000 per year. That is direct examination. This is a criminal prosecution.

Cross examination, it turns out she invests in mortgage syndications.

I got up and I said, "By the way, how do you do overall, Miss DeWitt?"

And she turned to the Judge and she said, "Your Honor, is he asking for my gross income?"

And Judge Metzner, if I recall correctly, said, "I think that's what he's getting at."

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And she said, "About $50,000 a year."

And I said, "Fifteen?"

And she said, "$50,000 a year."

Cross examination, mortgage syndication, a victim.

Mr. Mols, did you remember Mr. Sprizzo and Mr. Mols? He is a wholesale butcher in Belgium, wholesale, not retail, wholesale butcher in Belgium, he got money in the Belgium bank. You heard Mr. Mols and Mr. Sprizzo go at it.

Do you think Gustav Mols could be run over even by the Green Bay Packers?

And Gustav Mols got a property report in 1966 from New Jersey. He purchased from New Jersey.

What does it say right on the back?

"No attempt has been made to evaluate the offered lands. However, the prospective purchaser is advised that these are speculative lands and the value will depend on growth in the area. It is not reasonable to expect to sell undeveloped lands at a profit without loss until and unless the areas develops."

1966, New Jersey. There is a lot more in there, too.

So Gustav Mols bought some land. What are we supposed to do about it?

Mr. Kaufman -- Ms. Hynes said Mr. Kaufman was eighty-one years old. He was eighty-one years old. He was pretty young looking eighty-one, if you remember. He was a college educated newspaper reporter. He had no problem with his investment, until he heard of the adverse publicity about Rio Rancho.

He wrote to the company and asked for his money back because it was an emergency because Mrs. Kaufman had died. Mrs. Kaufman had died a year before he wrote for his money back and he said on direct examination it was sort of a white lie to create a sense of urgency.

He was a nice man. That's what he said.

And then on cross examination he said, "Yes, I wrote the letter because of the publicity. The publicity played a substantial part in my decision to sell my land," and the poor guy sent it down to those auction people.

Mr. Sporzynski, a chemical engineer, his wife a psychiatrist.

Exhibit FE, no assurances when development will reach the land. I think it was commercial property.

He said bought for investment.

It is like walking up to the witness, hitting a switch and someone saying, "Bought for investment."

It turned out on cross examination he had written a letter down to Albuquerque inquiring as to whether his wife could practice psychiatry in New Mexico, could become licensed to practice psychiatry in New Mexico, yes, he was considering moving because his wife had arthritis.

Investment.

His wife had invested in Florida land. He invested in the Colombus, Ohio Motel and lost $3600.

I asked him about a statement he made to Paul Mann.

Maybe you remember this.

I asked if he had written off his Rio Rancho property on his tax return. He had not.

I said, "Do you remember being interviewed by Paul Mann?

"A Yes.

"Q He spoke to you about your investment at Rio Rancho?

"A Correct.

"Q Do you recall telling Mr. Mann that you could afford to wait five, even ten years if it is necessary as your sons would get the benefit?

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"A That was the statement which --

"Q Did you tell Mr. Mann that?"

He looked up and he says, "I don't remember. Has he any proof of that written?"

Morris Gusowsky.

Morris Gusowsky is a public accountant. He is living there and he loves living there. He understands accounting.

I said to Morris Gusowsky, "Have you attempted to write off your land acquisitions as a loss on your income tax return?

"A No, I haven't, no, I haven't.

"Q You understand, of course, you can take a capital loss and apply it against a capital gain?"

He understood that.

And you can also take a $1,000 a year against your ordinary income, that's what you can do. If you got a worthless investment, if you made money on one investment and lost in another, you can write the bad investment off against the good investment. If you haven't had any good investment, you can write $1,000 of the bad investment off against your ordinary income, what you are earning. And he hadn't done that.

He deducted all his interest payments.

I asked him if the taxes had gone up a little bit, and he said yes, that is, dow in Sandoval County, Rio Rancho.

I asked, "Are those taxes based on Sandoval County's appraisal of land?"

And he said, "Yes, they are."

Then Ms. Hynes on redirect asked him about this tax thing.

"Q In order to take a loss against a capital gain on your income tax, would you have to sell your land in order to take a loss on it?

"A I would have to sell my land.

"Q Have you been able to sell your land?"

I said, "Did the witness finish his answer?"

The Court said, "Are you finished?"

The Witness said, "Well, I was going to say, sell my land or prove to the government"-- the same government, the United States government, IRS -- "sell my land or prove to the government that I could not sell it and take it as a total loss. I have not tried to take that route."

Morris Gusowsky.

Mrs. Clymer, Ms. Hynes mentioned her. She bought by mail in 1962. She sold in the auction in 1975.

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Bought for investment.

Mr. Lauer examined her and here is a letter, EX, four months after she purchased the land.

"My husband and I have"-- it is addressed to the Albuquerque Chamber of Commerce.

"My husband and I recently purchased one half acre at Rio Rancho Estates near Albuquerque. Since we are aware that buying land by mail is not a good risk, we have paid so far only the minimum payment. Would it be within your jurisdiction to inform us whether or not this land is of any value for building a home. We would like to build in or near Albuquerque eventually since we have heard very favorable comments on your city."

She testified here she bought for investment, and four months after she bought it she wrote that letter to the Albuquerque Chamber of Commerce.

They wrote back, 1963, January 7, 1963:

"To date, the Better Business Bureau has received numerous inquiries from prospective land purchasers who expressed an interest in Rio Rancho Estates. To date we have no written complaints on Rio Rancho Estates."

Then they say, Albuquerque, New Mexico" -- this is the Chamber of Commerce -- "Albuquerque is today

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growing 200 percent faster than the entire southwest... four times faster than the nation as a whole. Albuquerque has gained 700 percent in population during the past thirty years.

"Our Bureau takes the position that all real estate investments fall within the speculative category and future values depend on area growth. We always recommend personal inspection to ascertain if the property meets one's own requirements."

That is Mrs. Clymer, going to live there.

Things happen, lives change. But is that really a reason to say, "I bought for investment"?

Now, in talking about this ready resale concept, the inability to resell, which supposedly proves fraud in this case, if they proved inability to resell, as I said, Ms. Hynes did not tell you, with one exception, Mr. Sader, not a single witness testified that anyone had told them that they could resell quickly for a profit.

Mr. Sader said -- he came on the stand. He put his initials on Exhibit 314, which was one of the scripts. He said that is the speech he had heard and he said he had been told that his money would double in a year.

On cross examination, Mr. Arkin said, "You show me where it says that in that script," and it went on, and he said, "No, it does not say it here."

He also said on his direct examination that he had been told utilities were going to be at the property in five to seven years, and he testified in the grand jury -- I'm sorry.

Mr. Arkin:

"Q You said earlier utilities would be on your lot. During what period of time?

A A couple of years."

Then it turns out he was questioned under oath on January 22, 1977:

Question by Mr. Devorkin -- by Ms. Hynes:

"Were you given any assurances as to when that land would be developed?

"A No. As soon as they were finished with sections, they are going to spread more and more, each one section to another."

That is the one witness who said he was told he would double his money, he couldn't find it in the script, but he said that's what he heard. He was told utilities would be there a couple of years, two years before under oath he said just the opposite.

You may recall, if my recollection is correct, that Mr. Sader bowed to you when he left the witness

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box.

Ms. Hynes mentioned Mrs. Greenberg as victimized.

Mrs. Greenberg, on her direct examination:

"Q Was anything said to you how long it would be before utilities and roads would be put in on this commercial property?

"A No specific time was given, no specific number of years."

Ms. Hynes said, "Pardon?"

Mrs. Greenberg said, "No specific number of years.

"Q What was your reason for purchasing this acre"-- they bought another acre in 1968.

"A Well, that's the reason -- where they were developing the property, as they went further and further, this was much, much nearer than the first property we bought, which they would take a long time to get to."

Then on the question of resale, "Was anything said to you when you purchased the lots in Unit 25 about resale?"

Mrs. Greenberg, "I don't know what you mean. I must be missing something. I don't quite get what you mean.

"Q You said that you purchased the lots in Unit 25 for investment.

"A Right.

"Q Was anything said to you about reselling that investment?

"A In 25?

"Q Yes.

"A Oh, I was not sure which property you were referring to.

"Nothing was said specifically about the reselling."

Mrs. Greenberg. She was purchasing for investment. Of course, she wrote out and said, "Of course, I can't come out to Rio Rancho any more, I had an operation, I'm going to go to Florida."

Now, what is there evidence of worthlessness, anyway?

Approximately 42,000 persons or couples, units they are called, own Rio Rancho land. 690 put their property up for sale. That is about one percent, 1.6 percent, for multiple listing from 1971 to 1974. 20 of those were sold.

We don't know the price they were listed at, we don't know if the exchange right was stressed, we don't know anything. We don't even know why the decision to sell was reached by anyone who had their property on multiple listing.

We know one thing, no efforts were made by the realtors to sell the property. It went in the drawer.

You may find why. Because if you sell a house for $50,000, you get ten percent; you sell an acre of raw land for considerably less, you get ten percent. If you are a realtor, you are going to spend your time selling houses.

If I put General Motors stock in a drawer, do you think it would sell?

Their auction. Mr. Arkin has described the auction. It came in the summer of 1975.

Mr. Kaufman, one of the people who sold at the auction, testified he had sold because he had read adverse publicity about the company, self-generated.

And even then, in those circumstances, with the adverse publicity, approximately three percent of the purchasers thought about auctioning.

Remember Ron Williams? This was more hard evidence, quote/unquote. He testified that the Albuquerque Board of Realtors was getting three to five letters a day for a couple of years inquiring about resale. That was his testimony.

He brought in a file and there were 173 letters in it and he said, "Well, they didn't keep very good files."

Consider the evidence of the value that they ignore: Mols doubled his money on an acre.

Mrs- Bonavisa, Mr. Arkin has talked about this.

Mrs. James made $12,000 on her house.

Mr. Frappier, who testified for us, moved in 1973, built a home, home and land cost $42,000, on the market for $87,000, he thinks he is going to get 82.

Mr. Kearney, home in 1971 for $22,000, was divorced in 1974, it was appraised at $40,000.

Mrs. Mellenbrook with the "for sale" sign.

And George Carruthers, land values have wncreased up to the Sandoval County line, and there is no wall between Bernalillo County and Sandoval County.

Al Pierce, land values in Corrales, just below Rio Rancho, just down the block, increased dramatically in the past ten years.

Mr. Olguin, in the last year, Corrales property, raw land, no utilities, 5,000 per acre to $6500 an acre, no utilities, no community services, no pool, no halls.

And, of course, the banker, Jack Graham, 95 percent mortgages.

Your Honor, I believe I have about fifty minutes to go. Can we take another short recess?

THE COURT: All right.

(Recess)

THE COURT: You may proceed.

MR. FLEMING: Thank you, your Honor.

I want to turn to the other charge -- let me clear up one thing which I may have left. It has to do with the exchange right.

I said on 178 to 180, when Rio Rancho bought that land the exchange right attached to it. That, of course, only had to do with lots which could be exchanged, and the ranchettes and the commercial property would not be exchanged.

Of course, unless, as you will recall, that is what the contract said and that's what the witnesses understood when they purchased.

The other claim is this claim on growth.

Mr. Arkin talked about it yesterday. I think it is clear to all of you what the ocmpany was saying.

It is interesting that witness after witness was referred, you will recall, to pages 8 and 9 of the

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brochure "This is My Land," and yet when we got to the question of growth, it was all forgotten, at least page 8 was, Albuquerque's future growth, a predestined pattern. According to experts, Albuquerque's further growth pattern is predetermined. A prediction.

Something Ms. Hynes left out: "If one accepts the predictions of the city fathers and population experts, Albuquerque will have a population of 600,000 in the next fifteen years.

Obviously a prediction.

Mr. Arkin showed you one map in there. Here's another that was given to the customers, potential purchasers. "Shaded areas indicate lands not available for homesite use." Either state, reserve lands, parks and so forth.

There is Albuquerque and there is Rio Rancho (indicating).

Where is the deception? Exhibit 271.

Our witnesses, the ones that testified for us, said that understood there was some land left for development in the northeast. The company was saying that in the future the growth had to come through the northwest corridor through Rio Rancho.

Now, Mrs. Hynes said, "Don't let them throw up the red herring of density." So I am going to throw up the red herring of density.

Here's five acres undeveloped land. This is five acres of developed land.

They are both five acres. Developed land may

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have an arroyo in it. the pattern in Albuquerque, might have some park land, it's got streets.

So that five acres is a little different than this five acres. The density of that five acres traditionally in Albuquerque, which was decreasing in 1965, the density of raw undeveloped land, of all the land was 5.1 people.

Ms. Hynes in talking about it said this is a density with regard to undeveloped land which does not take into account streets, park and arroyos and natural configurations.

This plain five acres she wants you to envision a development that looks like this (indicating). No roads, no arroyos, houses, houses, houses, houses, houses. That would increase the density. That is not what Albuquerque was like. That is the density we are talking about. The historic density of raw land in Albuquerque. The land in Albuquerque, 5.1.

Now, it was misleading, they say, to say that Albuquerque was bursting at the seams. Here's Exhibit 5. It shows annexations to the city of Albuquerque of acreage from 1950 right through 1975.

They annexed two miles in 1972. A mile in 1969. Four miles in 1965.

Albuquerque literally was bursting at the seams. The seam never burst because they just let out the seam.

Something else: In 1965 everyone was predicting a substantial increase in population ranging between 625,000 -- or ranging up to a population of 625,000-- as high as 825,000 in 1985. X-ray Prognosis, they tried to dilute this figure saying it was the highest range, but x-ray prognosis, the planning book, says that 825,000 population is not an unreasonable figure.

Albuquerque was about 210 or 20,000 at that timetime, 230,000 at that time, 240,000 at that time, take it as you will, everyone was agreeing there would be an increase between four and 600,000 people in the next twenty years.

Everyone agreed that Albuquerque traditionally had grown at a density of 5.16 persons per [illegible] undeveloped land.

Now, I don't think we have used this word in this trial "liar" and I am not going to, but you may find that it was used or inferred with regard to Mr. Yguado who came to testify.

He testified to what he saw as available. Forget my clients, Mr. Carity and Dan Friedman, but let me do something that will bore you with Mr. Yguado because maybe he deserves that.

In her summation Ms. Hynes said:

"Now, Mr. Yguado when asked: Mr. Yguado, are you aware that the Westland Corporation was formed to solve title problems to Atrisco?"

He said, "No."

He was the only witness who didn't know that.

Here's what was actually asked and answered.

MS. HYNES: May I have the page, please.

MR. FLEMING: 7157:

"Q Are you familiar with the Westland Corporation?

"A Yes."

By Mr. Yguado:

"Westland Corporation was a corporation formed to resolve the title problems on the Atrisco Grant, is that right?

"A No, it was" -- and Ms. Hynes broke in:

"Q That is not right.

"A It is one of the things they are trying to do, I guess, but that is not the reason it was formed."

That is what Mr. Yguado actually said.

What did Mr. Carruthers say? Mosaic.

"Q Mr. Carruthers" -- page 4421 --

"Q The Volcanos are located right here. This lava flow escarpment -- this lava flow escarpment" -- exactly what Mr. Yquado was talking about, this lava flow escarpment -- "defines the western boundary of land that we, meaning the city, feel is appropriate for development because when you get above that area the soil problems are very difficult to work with for installing utility systems."

Didn't Mr. Yquado say exactly the same thing?

Mr. Carruthers on cross examination talking about Atrisco, question by me, talking about the Atrisco,

"Q The rest of it, the Atrisco Grant, isn't it correct that there are still substantial title problems with regard to the vast majority of the Atrisco acreage?"

And Mr. Carruthers:

"The majority, yes.

"Q Am I correct that the Atrisco acreage comprised about 55,000 acres?

"A I don't know the acreage, but that sounds fairly close.

"Q Am I correct that title problems exist with regard to approximately 50,000 of those acres?

"A That could be.

"Q Am I correct that just this year in Albuquerque, 1976, a lawsuit was filed by a company called Westland to try to quiet title to those 50,000 acres?

"A Yes.

"Q That has just been filed?

"A I believe there have been two suits filed, yes, sir."

This is Mr. Carruthers. This is in 1976.

"Q Are you willing, Mr. Carruthers, to give an opinion as to how that lawsuit is going to come out?

"A No."

Exactly what Mr. Yguado said, this witness who supposedly was bought and paid for.

"Q I want to go south, the valley, we are talking about that area around the river, isn't that right, from north to south?

"A Yes.

"Q I want to talk about the south valley.

"Am I correct the south valley has the highest crime rate in Albuquerque?

"A Yes.

"Q Am I correct that the planners do not expect substantial development in the south valley?

"A We do not recommend substantial development there.

"Q You do not expect it?

"A That's right.

"Q Let's get to this space over here below Kirtland. There is no question you cannot build houses on Kirtland, right?

"A Right.

"Q Am I correct that this blank space down here is state land owned by the University of New Mexico?

"A It's state land, yes, that's right."

Just what Mr. Yguado was saying.

"Q State land right down to the reservation." That is the Isleta Reservation.

"A Yes.

"Q So we have got Volcano Cliffs, Atrisco, Pajarito, the Indian reservation, the south valley and state land?

"A Right" says Carruthers.

"Q Then we have got Volcano Cliffs and Paradise Hills, is that right?

"A Yes.

"Q Am I correct that they had to blast, use dynamite to put in foundations in Volcano Cliffs?

"A I believe both in Volcano Cliffs and in parts of Paradise Hills."

Just what Mr. Yquado said.

"Q Paradise Hills has a sewage problem which may threaten the city that you are trying to take care of?

"A All it requires is a connection to the city sewer system.

"Q You are doing something about it?

"A That is right.

"Q You are not required to do the same thing about Rio Rancho, are you?

"A No.

"Q So far as you know, Rio Rancho poses no sewage threat to the city?

"A That's right.

"Q Am I correct they do not blast to put foundations in at Rio Rancho?

"A As far as I know.

"Q That is not volcanic land?

"A That's right."

Just what Mr. Yquado said.

"Q By the way, do you recognize Corrales?

"A Yes.

"Q There is a blank space in here, isn't there?"

The blank space between Corrales and Rio Rancho.

"Q There is a hill there."

I am sorry.

"Q Am I correct there is a hill there?

"A There is a hill there.

"Q A substantial slope?

"A Yes.

"Q And not available for building?

"A Part of it.

"Q Not entirely unavailable for building, but for the most part substantially unbuildable?

"A Yes.

"Q North Albuquerque Acres."

He acrees. Twenty percent has been developed and that is it.

Then I go on and he says, twenty-five percent of what is developed at North Albuquerque Acres are mobile homes, the rest are residential.

He talks about the Simms Property.

"Q Isn't there some portion of that Simms Property which cannot be developed because of he configuration?

"A It depends on how you handle the drainage.

"Q Isn't there an arroyo problem?

"A There are two major arroyos in that area, yes.

"Q Flooding problems?

"A They require treatment.

"Q By the way, has the Simms family sold all that property?

"A They have not sold all of it to my knowledge. I think they still own some of the eastern part of it in trust for the boys academy."

Then he talks about another 1500 acres or so developable in the area there and then I say:

"Q So for the time being, is it fair to say that except for this piece of property here in Simms, having talked about all this empty space, Albuquerque has gone about as far as it can go?"

His answer:

"Aside from the vacant land in the city, yes."

Isn't that exactly what Mr. Yquado said?

Then I got to vacant land and I said,

"Am I correct that back in 1963 you were talking about exactly the same thing, that is, filling in or developing vacant land in Albuquerque?

"A Yes.

"Q Am I correct that now in 1975, when you have issued a new report and a new plan, you are faced with the very same problem of filling in vacant land in Albuquerque?

"A Yes.

"Q As a matter of fact, the percentage of vacant land in Albuquerque within the city limits on a percentage basis has increased since 1963, has it not?

"A A little bit, yes."

Then we get to density.

"Q Am I correct that in 1960 Albuquerque had 39,040 acres?"

He corrects me to "39,110."

Population was approximately 200,000 in 1960. That would be a density of 5.16 persons per acre.

In 1970 the total acreage was 51,000. They had annexed -- they had burst at the seams or they hadn't burst at the seams -- but they had annexed.

"Q The population of Albuquerque city limits in 1970 was about 240,000?

"A Yes.

"Q Would you accept that density based on those figures was 4.8 persons per acre?

"A Yes.

"Q For a decrease over that ten year period of time in terms of density?

"A Yes.

"Q While you were setting out to fill up all this vacant land?

"A Yes."

Mr. Carruthers testified that what he was trying to do was turn Albuquerque into a density, mass city because it was cheaper for the city, so he said.

What did Mr. Yguado say? He said, you know, people live the way they want to live. Cities don't grow that way. They grow by individual decision.

Mr. Carruthers admitted that his plan in 1963 to put all those people into Albuquerque had failed.

Now he roughed out and said there were 164,000 -- after he eliminated everything Mr. Yguado had eliminated -- he said something like 164,000 acres in Albuquerque up to Sandoval County. You multiply that by five, it is 750,000 people.

That means that if the 750,000 people had come, it would be chock a block 1985 right to Rio Rancho, if they come.

Yguado actually measured. No one has challenged those measurements. He measured with a ruler and he came up with 102,000 acres. Talking about exactly the same thing Carruthers was talking about but not approximating, actually measuring.

You multiply that by five and that's 500,000 people.

600,000 people, as was projected in 1965, or 800,000 people, as was projected for 1985 by everyone, Yguado is right, where are they going to live?

Why is Dale Bellemah on the west side?

Isn't Rio Rancho right?

Mr. Yguado says they are going to come and they are going to live in the northwest, in that corridor.

Mr. Graham is betting his money on it, the bank's money on it.

The West Side Association says and has been saying the same thing.

Reverend Rupley, he came in. Why didn't they call him a bought and paid for witness? He said he was asked to go and look at the Lutheran Church on the west mesa in 1968. He talked to people. He talked to the school people. He went back and he said, don't close this parish. He has seen the west side grow and he agrees that's the area of growth and he agrees with what these people said about the direction of growth in Albuquerque.

He has seen his parish grow and he now has to rebuild his church or enlarge his church and he's had to make a presentation to the governing body of his church, and they have sent people down to examine the area, and they have authorized the enlargement of the church.

Here is The West Side Story, the film you saw, the one that Ms. Hynes says was edited. Or course it was edited.

What's in it is from the original film. The man's name is G.W. Falls. He is saying: "In 1967, one of the most dramatic things going on in our city today is the expansion of and growth of Albuquerque's beautiful west side. Albuquerque has enjoyed an experience of one of the most remarkable growth rates of any city in the United States."

The West Side Association was saying, "You see the west side holds the key to Albuquerque's future. Blocked by mountains to the east, reserve land to the north and south, Albuquerque has already started its expansion to the west where it has great opportunities for industrial development."

"Magnificent new university, new industry."

A metropolitan traffic survey predicts the population of the west side will total 300.000 people or more by 1985. The West Side Association film, 1967.

This means an influx of nearly a quarter of a million people on the west side, almost equal to the present total population within the city, and where will they go? Into spacious new subdivisions -- subdivisions -- "with paved streets, schools, professionally landscaped. At least five of these subdivisions on the west mesa have been master planned."

At least five. Some deception Rio Rancho was practicing just because they didn't show a picture of College Heights. Some deception.

At least five of those subdivisions on the west mesa have been master planned.

Was the city planning commission interested in Rio Rancho? Carruthers said, "No."

Here's a photograph, Dick Vaughn, city planning commission, Albuquerque: "The city and its future residents may be assured of the best in community planning as the area continues to grow. As the city planning commissioner and resident of the west side I am optimistic about Albuquerque's growth and I feel very strongly that the key to Albuquerque's future lies in the development of the west side."

Steven George, city traffic commission. "Recognizing the need for additional access to the west side, the city of Albuquerque is projecting several new bridges between east and west. Because of the growth potential of the west side of Albuquerque, it is an important part of our continuing comprehensive and cooperative transportation program that we now have under way. The new east-west interstate highway bridge across the Rio Grande has just recently been opened up to traffic." 1967.

There was a black and white film earlier than that. It was shown, the black and white film, in connection with the Koniecki script which contained the resale representation, which was used for only four months in 1965.

Mr. Musgrove, the telephone man that you saw in the film and on the witness stand. Now, I don't care what he said on the witness stand, I do care about this. He did say this: he said that they asked him to come because they didn't want a public relations guy. They wanted an authentic guy. They let him say what he wanted to say.

He testifies, now that there is an indictment, he testifies now that he edited out the word "only," but whatever he edited out he said on film. They, by the way, didn't chase him away.

"I am Dick Musgrove, forecast supervisor of the Mountain States Telephone Company. Albuquerque is growing fast, but it's hemmed in on three sides so we built this new exchange building two miles from the Rio Rancho Estates to take care of the tremendous growth that's coming this side of the river."

He said that in 1965.

These people are accused of fraud for saying the same thing.

Albuquerque Industrial Development Service. "Albuquerque is framed," you remember?

MS. HYNES: Your Honor, that testimony was stricken. I object to the reference to it.

THE COURT: Not that I know of. What are you referring to, Mr. Fleming?

MR. FLEMING: I believe Reverend Rupley talked about it, if your Honor please.

THE COURT: None of his testimony was stricken. Go ahead.

MR. FLEMING: What was my last line?

(Record read.)

MR. FLEMING: Now, what are they saying to you? They have said toyou that investment means speculation and they have not produced, but for Mr. Seder, one witness to say that he was told there would be ready resale, quick resale of this land.

Now they are saying that all of this evidence doesn't matter. They may say now that even though Mr. Carruthers agrees with Mr. Yguado, Mr. Yguado is still bought and paid for. Ignore it. Ignore the fact that Dale Bellemah has gone to that northwest corridor, that the bank has put $14 million into Rio Rancho and is putting more money into Taylor Ranch in the same area.

Ignore the population projections. Ignore the hard reality of the legal and physical restraints. Ignore the fact that in 1965 there was no Westland Corporation with regard to Atrisco; that it was started in 1968 and it is eight years later and they still don't have title.

Mr. Carruthers says, "I don't want to bet on it. I don't want to give an opinion as to whether they will or will not clear up that mess."

Ignore all of those things. Ignore the logic, the common sense, everything, because unless you ignore it, then the fact doesn't fit the bed so you have got to cut off the legs of those facts and you have got to send them to jail because in certain lines in certain scripts, without regard to the maps, without regard to 384 and 388, without regard to the visits, without regard to obviously what these people were saying anyone with any common sense, what our people who testified here said they were saying, these fellows said, "Only." God.

Albuquerque's population has not exploded over the past ten years, but this country has had some problems. Carruthers testified to that. We know that. How many people that might move can't sell their house to move?

The witnesses testified and said it is picking up again. They have got 300 some odd thousand people in Albuquerque now, an increase of about 70 or 80,000, and the east side is finished. Everyone has said it. Carruthers said they have gone about as far as they can go.

Graham says it's done.

Yguado says it is done.

70,000 people. Suppose they had gotten anywhere near the inflow that everybody was predicting in 1965, Carruthers was going to put them all in the city. He has had a 70,000 person increase and he has got no room left.

Sheer, common, overwhelming logic takes you right there (indicating).

But put them in jail.

MS. HYNES: Your Honor, I am going to object to the third reference to that.

MR. FLEMING: I will withdraw it, I am sorry.

In the script they said, "only" and everyone perceived it as meaning "only." Now they are going to argue, well, there is a lot of room before you get to Rio Rancho, a little corridor in the northwest.

Mr. Avellanet, a modest density of 3.6 people per dwelling, about 11 people per acre, which never existed on raw land in the history of Albuquerque, and is 48 square miles, which never existed, he is going to be able to put 300 some odd thousand people right in the northeast. That's what he said in 1966 and that's why these fellows are all guilty.

The put about 60,000 people in the northeast and there's nothing left. Some expert.

In her summation, Ms. Hynes says that Avellanet recommended large acres and horses on the east side of Route 528. Large acres and horses. The best evidence in this case they didn't pay any attention to Avellanet because he wasn't worth paying attention to because there aren't any large acres or horses on that side of Route 528.

As Mr. Arkin said, couldn't the state sell the land? Couldn't the sate see all that land and make it available for development? Here we are in 1977 trying this.

You may find from the evidence in this case that Rio Rancho has the best land left. No volcanoes, no basalt, developable and being developed.

You may find Dale Bellemah might wish he had a piece of it.

Now, I represent or we represent, John and Elliot and I, both Dan Friedman and Chester Carity and they have allowed me to speak for both of them. Dan Friedman was the controller, financial man, of this company. That was his job, administrative until 1971.

Then he became the vice president of sales. He went to some dinner parties. So may you find did state inspectors. So did the witnesses we called to testify.

The resale disclaimer was in full effect every month Dan Friedman was vice president in charge of sales. In 1972 they had to start signing receipts for the property reports.

The charge seems to be that he wanted the salesmen to sell. A sense of urgency, sell. He was anofficer in a public corporation.

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Officers talk to their ownership. They are over three million shares, look in the property reports, three million shares outstanding in this company owned by individuals. God save us if the sales manager of a public corporation or any corporation should not want his salesmen to sell.

Dan Friedman is not even connected, there is no evidence that he ever saw the Avellanet report, which is their big evidence of fraud, on growth. He didn't see it. No evidence he ever saw it. He is sitting here.

(Continued on next page.)

Interesting slip. Ms. Hynes didn't mean it. She was pointing to stock ownership and she said Dan Friedman had 78,000 shares.

When you read the chart, you will see that he has 7800 shares.

It's kind of an interesting slip. It is -ind of a search for things. Not bad, she didn't mean it, but how the unconscious works.

Chester Carity, he saw some scripts, he went to a couple of dinner parties.

Was he acting in bad faith?

They introduced this exhibit, Exhibit 498.

In the front of it they are talking about commitments in Chester's handwriting, "God no, don't make any commitments."

They are talking about the Roadrunner, the newspaper down in Rio Rancho. They sent him a copy to look at and he says -- the handwriting does not appear on this copy -- "Don't make any commitments in the Roadrunner."

They say, "Aha, no commitment to development."

Here is what he says in his memorandum:

"I would certainly not"-- talking about the newspaper -- "I would not go into any commitments or plans of Rio Rancho in the future," that is in the newspaper, "except perhaps minor ones that have already been committed or that are already in progress. We must remember that anything ever printed in this paper as future plans must then be carried through, must then be carried through, even though we may come up with what we consider a better alternative. The residents will always be trying to pin us down on one thing or another which may interest them in particular, but we must always be free to adjust our planning."

That's all he is saying, like anyone developing anything.

If the concrete patios crack, we ought to build them differently," that's what he says.

At the end he says, "Fight with me on any points I raised with which you disagree."

And they say he's not a committed man. Just the opposite.

His memorandum, Chester Carity's memorandum on the Avellanet report discussing the Henninger thing, the recommendations.

"On page 45" -- this is 1966, I guess, I don't have a date. It's in the 1960's.

On page 46, Mr. Carity writes, "He discussed various reserved acreages which I believe we have covered pretty well for the entire Rio Rancho area. However, I don't believe we have set aside the health facilities he mentioned and I think it should be included in our plan. Although I would not make the service area 3,000 acres"-- that's Henninger and Avellanet -- "but I would make it 4400 acres to measure in with some of our reserved areas aleady planned."

That is Chester Carity 1966-'67.

On page 46, referring to the report, he mentions the positive platting of the industrial park reserve west of 528.

"I have questions concerning this platting since I," Chester Carity," I don't want to sell any small units which would divide the ownership so much that it would be detrimental to future development."

That is Chester Carity.

"He shows a golf course site," meaning Avellanet. "Was this site picked from a logical place on the map or because the topography of the land makes the best possible location?"

If we go ahead with his idea of a small start at the zone area of Corrales North,we should do with a minimum possible investment and no promises of community

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facilities. The plans should be made to bring in the necessary utilities the cheapest way and I would like to get estimates of these costs. By cheapest way, I do not mean overhead but underground."

Now, I am really finished.

This is a criminal case, I say it again. Reasonable doubt, presumption of innocence, what you would owe a friend, someone you knew.

You may find it is the duty of free people to give freedom unless they have carried their burden beyond a reasonable doubt. That's what this country is about.

I am not going to argue about reasonable as the Judge will instruct you. You may find it is really something for your hearts and your minds and your consciences and that is sufficient for us.

I would like you to remember a couple of things.

A case which is not proved is a case of not guilty.

A case where there are questions is a case of not guilty.

And remember that this is a funny case, because Rio Rancho is continuing.

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Are they right; is Yguado right? Is there fraud or good faith? You have got to be right.

I would just like you to take one other thought to the jury room with you. You may find when we opened this case we didn't know what this case was about, either. You may find that it is a mean, confused, procrustean case. And you may find some poetic justice that when this case ended or came to an end with Mr. Yguado -- you remember Mr. Kaufman standing there with his red pencil and his calculator, as I said before, in a federal felony criminal case, trying to drum out of a calculator enough acres, enough density, maybe enough dynamite, to make their case, you take that picture back with you into the jury room, you may find that was Mr. Kaufman looking for his case.

You have been a terrific jury. You have been here every day. We just want your best efforts.

Thank you.

THE COURT: We will adjourn for lunch and return at 2:15.

(Luncheon recess)

dt

AFTERNOON SESSION

2:15 p.m.

(In open court; jury present.)

THE COURT: You may proceed.

MS. HYNES: Thank you, your Honor.

Mr. Foreman, ladies and gentlemen of the jury, Judge Metzner, defense counsel.

You have heard a day and a half of defense summations, and in those summations you have heard Mr. Arkin refer to the government's case as unfair, as a cruel prosecution; Mr. Fleming went even further, he said it is ill befitting someone charged with a public trust referring to the government, to bring this case.

Well, if you think that thegovernment is trying to deceive you, which is what Mr. Fleming and Mr. Arkin are telling you, if you think that the government is just trying to deceive you people of the jury in bringing this case and presenting the evidence in front of you, you just go into the jury room and acquit the defendants. It's as simple as that.

The government isn't trying to deceive you. The government is trying to present evidence before you as to how these defendants deceived the purchasers.

You listen to the summations, and I told you when I summed up, what I said wasn't evidence and what the lawyers, the defense counsel, said wasn't evidence. And there is very good reason for that if you really analyze what the defense counsel told you as to what the evidence in this case is.

You may start to wonder, you may start to think, "Were we all sitting at the same trial listening to the same evidence?"

Now, they can say that ceiling is blue 80 million times and it doesn't make that ceiling blue, and that's what they are trying to tell you now.

Are they seriously trying to tell you that this really wasn't sold as a financial investment? That all of a sudden it was really sold for pepole to build houses and that 84 per cent of the people who bought this land really bought to build a house? Is that what they are really trying to tell you?

It is strange contract duality, it is not believable and it isn't true, and it isn't true on the evidence you have heard today.

Mr. Arkin accused the government of cheap shots, of being unfair. The cheap sht was Mr. Graham, Mr. Graham, the defense witness. Mr. Graham.

Mr. Graham testified at page 6350 and 6351:

"Q Mr. Graham, I am asking you a question."

This was by the government.

"Q Was it true in 1966 that Albuquerque could only grow to the northwest?

"A No.

"Q And it's not true today, is it?

"A That it can only grow?

"Q Yes.

"A No. It still has growth to the Northeast Heights, but very little."

Now let me add that when he talked about the very little growth in the Northeast Heights, he said it was 2500 acres and he was really defining that as 2500 acres that could have sewers within three years, so you had to listen for his definitions.

Then he also tells you that as a matter of fact two weeks ago his bank was able to buy another 200 acres in the northeast because they got sewer lines.

So when he starts talking about acreage in the northeast, he is qualifying that as sewer lines within three years.

Okay, let's see what else Mr. Graham said.

At page 6381.

"Q Let me read the statement to you again.

"MR. KAUFMAN: Your Honor, I am reading from 316, and that is a script from a party presentation.

"Q The city can only expand in one direction, and that direction is squarely through Rio Rancho Estates.

"Now, you have defined the northwest as everything down to Central Avenue, is that correct?

"A Yes.

"Q Is that an accurate statement to have made in 1966 that Albuquerque could expand in one direction and that direction is squarely through Rio Rancho Estates?

"A Well, my opinion is it is not a completely accurate statement. Rio Rancho is in the northwest.

"Q But the northwest includes a lot of other land other than Rio Rancho?

"A Sure.

"Q Let me read to you from 314, which is another script in evidence. This is 1972.

"Today it is physically and geographically impossible for the growth of this city," referring to Albuquerque, "not to first come through Rio Rancho Estates.

"Is that an accurate statement?

"A No, I wouldn't say that's an accurate statement if it says first."

MR. FLEMING: I object to that, your Honor. That was the statement that was only a half statement.

THE COURT: That's right.

MS. HYNES: Your Honor, I am going to continue on when Mr. Graham was called back.

THE COURT: I sustain the objection to that.

That was not a complete sentence read from the --

MR. FLEMING: I ask for a mistrial, if your Honor please.

THE COURT: Denied.

The jury will ignore that reference by Ms. Hynes.

MS. HYNES: On cross examination at 6401, there was a question by Mr. Kaufman:

"Q You said in your opinion Mr. Friedman's reputation for honesty and truthfulness is good, is that right?

"A Yes, sir.

"Q Do you remember the scripts, two scripts." Now let me quote.

"Do you remember the scripts that I read to you just a little while ago that you said were inaccurate and untrue in terms of its depiction of Albuquerque's growth?

"A I don't think I used those words. You will have to refer -- tell me.

"Q Do you recall I read to you the following," and then it is the same quote, a portion of that quote, "Today it is physically and geographically impossible for the growth of this city not to first come through Rio Rancho Estates?"

MR. FLEMING: The same thing, your Honor.

THE COURT: The same thing.

MS. HYNES: Let me go on.

THE COURT: Strike that reference by Ms. Hynes.

MR. HYNES: The next question:

"Q And I also read to you from 316, which basically said language substantially the same, and you said that was inaccurate as well. Do you recall that?

"A Well, there were two parts of that statement. One of them I agreed to" --

MR. FLEMING: Objection.

THE COURT: Overruled.

MS. HHNES: "-- and the other I didn't.

"Q The other was that the city can only expand in one direction and that direction is squarely through Rio Rancho Estates. I believe you said that was inaccurate as well given the overall context of the northwest.

"A Yes.

"Q If you knew Howard Friedman was involved in making those statements to the public in connection with selling 86,000 lots of land in New Mexico, would your opinion about his honesty and truthfulness be the same?"

MR. ARKIN: I object to this, your Honor.

THE COURT: Overruled.

MS. HYNES:

"Q Hypothetically, Mr. Graham, if you knew Howard Friedman was responsible for the production of that representation to thousands of people around the country who were at Rio Rancho sales dinners, would your opinion about his reputation for truthfulness and honesty be the same?"

The answer was: "No, I don't believe so."

Now, Mr. Arkin brought Mr. Graham back and he read to Mr. Graham the beginning sentence in 314, the part that was quoted to him and the remaining part of that sentence and that was all Mr. Arkin asked Mr. Graham. He brought him back all the way from Albuquerque, put him on the stand, asks him that question and Mr. Graham says: "No, it's really an accurate statement," and gets off the stand.

Mr. Arkin never asked Mr. Graham the next question, 316, which he was also asked about Mr. Friedman's reputation for honesty and truthfulness, and he brings him all the way back from Albuquerque and does not ask him that second question.

Why? Because his answer would have been the same. Because it was an inaccurate statement. And Mr. Arkin didn't ask him that second question after he dragged him back 2,000 miles from Albuquerque.

Now, who is taking the cheap shots?

Moreover, Mr. Graham previously testified, even after he said that the statement in 314 was accurate, was accurate when he came back, that statement, again, says the only direction that Albuquerque can grow is to the northwest, and he had previously said that wasn't correct. It wasn't correct in 1966 and it isn't correct today. But when he comes back he gets on the stand and he says, "Well, it is correct as it is stated in 314."

That is for you to decide, but he certainly wasn't asked that second question about 316. And his answer still stands about Mr. Howard Friedman's reputation for honesty and truthfulness in the community, it would be changed if he knew that that statement was being made and that Howard Friedman played any part in having that statement made to customers throughout the country.

And the evidence in this case is very clear that

Howard Friedman did play a part in having those statements made to customers throughout the country.

MR. ARKIN: Objection to that, your Honor.

THE COURT: Overruled.

MS. HYNES: You heard Mr. Fleming, Mr. Arkin refer to Reverend Rupley.

You may find that both of them have mischaracterized the testimony of their own witness, because Reverend Rupley testified as follows at page 6474:

"Q So when you were in Albuquerque in 1969, you knew that Albuquerque could only grow to the northeast, is that true?

"A Yes. I knew there was land still available."

This is Reverend Rupley. He is saying he knows there is land available in the northeast.

"Q Reverend Rupley, on direct examination you testified that when you went to Albuquerque it was your belief that Albuquerque could only grow to the west and the northwest, and I gather you are now qualifying that by saying that that would be true once the Northeast Heights was filled up, is that accurate?

"Is that accurate?

"A I think when I said that I said that Albuquerque was boxed in and could only go eventually in one direction.

Now, I added a word there.

"O Eventually?

"A I said eventually.

"Q You have added that word now?

"A Right.

"Q That word eventually comes in because of your awareness that Albuquerque at the time could still grow to the northeast, is that right?

"A You are talking about 1969?

"Q Yes.

"A Yes, certainly I was aware of that."

(Continued on next page.)

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Then Mr. Rupley testified with respect to his conversation with the secretary in the Superintendent of Schools office. You recall that the secretary pointed out a map and there were schools proposed for all parts of Albuquerque, and that testimony went as follows, at 6481:

"Q Who did you talk to?

"A A secretary. I think she pulled out a map and said schools are planned for these areas and she pointed to many areas.

"Q Which areas?

"A Almost all areas in the city.

"Q The northwest, the northeast, the southwest and the southeast?

"A Right, sure.

"Q How did that lead you to the conclusion that Albuquerque could only grow to the west and northwest if schools were planned all over the city?

"A I didn't say could only grow, I qualified my statement to state that after the Northeast Heights has become completely filled, there is only one way to go, west and northwest."

Now, Mr. Fleming and Mr. Arkin are arguing to you the government is using the word "only."

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We are using the word "only" because the defendants used the word "only" in selling this land, and that was a material fact in the decision for these people to buy land.

Were they going out telling their customers there is still more land in the northeast and it is only when the northeast is filled and it is only eventually that the northwest will take the growth, it is only eventually that it may come to Rio Rancho?

Who is being fair?

Were these defendants being fair with these customers in New York, in Seattle, throughout the country who knew nothing about Albuquerque, who didn't know about the Northeast Heights and then they complain that we are using the word "only"?

We are quoting them. They used the word "only."

They wanted these people to believe that "only" meant "only"; that you could only grow to and through Rio Rancho. It is very clear.

Now, all of the lawyers have said to you, you can take the material back into the jury room and to decide for yourselves. And I say to you that you must do that in deciding this case, because when these defense lawyers start arguing that this land was really sold to people who really intended to move there, I say to you that you cannot find that on the basis of what these people were told at sales dinners.

Now, we are not contending that nobody ever wanted to move there or that nobody ever thought about moving there.

We are saying that this land was primarily sold as a financial investment.

Now, Mr. Dan Monaco, that these lawyers think are so wonderful because he got on the stand and even though they turned him in he was honest, they said, well, he was honest, and he said it was sold as a financial investment and that's how it was sold.

Now, it also happened that you might decide that you want to live there. Fine. But basically, the primary reason was it was a financial investment, you always had that security, and if you decided you didn't want to move there, like Mr. Finnerty who decided he didn't want to give up his police pension, he thought he still had a good financial investment. That was the key. That was the inducement.

And you don't have to take my word for it, take the defendant's own training manual, the OPC training

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manual, Exhibit 752.

It is talking about closing.

"Start directing his thinking toward investment. Investment is always the closer."

Now, this land was sold as a safe, secure financial investment.

I feel like a broken record saying it. But it was sold that way. You know it, those witnesses testified to that.

Now, these defendants bring on people who live at Rio Rancho and they start saying one of them said, "Oh, I knew there was growth to the northeast when I was sitting at that sales dinner."

Did anybody testify that they heard anything about growth to the northeast?

And I asked her, I think it was Mrs. Mellenbrook, I said, "Well, did the speaker say anything about growth to the northeast?"

And she really didn't remember.

Don't you think she learned about growth to the northeast after she moved out to Rio Rancho and found out that there was a good deal more land in the northeast and now she knows that there is growth in the northeast?

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Are they seriously trying to tell you that they were talking about growth to the northeast? Are they now trying to shift and say, "Oh, well, we were talking about growth to the northeast and we were only saying it was eventually."

Then they start showing you this map and she says, "Well, you should have looked at this and seen there was a little white space in there," notwithstanding the fact that the whole arroyo is pointing to Rio Rancho.

I mean, is that what they really want you to believe?

Do they really want you to believe that they were selling houses to people at these dinners? That these people went to a dinner for two hours and believed they were going to move to Rio Rancho?

Sure, the film showed it as a place to live. That was one of the reasons why it was supposed to be a good investment, because Albuquerque was growing there, there would be a demand for it and people would live there. You didn't have to live there. The script said you didn't have to live there.

And look at those scripts. Do you see anything about the northeast in any of those scripts?

You don't have to guess about this. You got the scripts, you got a tape of a sales dinner, you got several tapes. We only played one, but there are other tapes of sales dinners in evidence. You can listen to them. None of them talk about growth in the northeast, I can assure you.

Take this confidential survey. The confidential survey is the first thing that the customer gets when he comes to the dinner and it is asking the following questions:

"What percent return are you receiving on your top investment?"

They are selling houses with that?

"If you were shown an investment program that has certainly, has certainly" -- not maybe, "has certainly out-performed the above return, what amount could you set aside a month?"

They weren't representing to you that this was a good investment that has had a history of good performance and they start bringing out the charts with 25 percent per year?

Mr. Arkin gets up there and starts saying, "Well, we weren't talking about quick resale, we weren't talking about liquidity."

They have been selling it for fifteen years.

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Do you think when Mrs. Clymer bought it in 1962 and she tried to sell it in the early seventies, long before this case came about, she listed it with a broker in Albuquerque for a year, she listed it with a company out in Illinois for a year, paid $100 and still couldn't sell it and then gets to the auction and sells it, do you think that was a quick return on her 1962 investment? Do you think she was looking at it for a quick resale, a turnover?

Mrs. Clymer produced this (indicating). She received this when she bought the land, which was sent to her through the mail, 140-G in evidence.

That says the following:

What your opportunity is in investing at Rio Rancho, and now I am quoting:

"The opportunity of a lifetime for a small investment to grow into a sizable fortune in an area where land values have certainly doubled, redoubled and redoubled again often in just a few years. In just a few years."

And we are now in 1977, and these defendants are telling you that this was sold as a long term investment. A long term investment? It's fifteen years they have been selling it. What are they talking about? What are they talking about, long term investment?

You listen to that sales training tape of

Sid Hollander and you listen to it and find out if there is any reference there to building a house at Rio Rancho.

The only reference in that tape is how to make money. And if they are putting percent return per year, do you think they are not telling you that that's what you could make?

Now, a case, a fraud case involves not only what is explicitly said, but everything that is implied from what is said.

So the defendants try to say, "Well, we didn't say that you could actually sell in three years."

Well, they don't have to say that. They don't have to say that. And the mail fraud statute and the law of fraud does not require for you to find that they actually say it. You must find --

MR. FLEMING: I object.

MS. HYNES: -- all of the implications --

THE COURT: I will charge the jury on the law, Ms. Hynes, not you.

MR. FLEMING: Thank you, your Honor.

MS. HYNES: You have to consider all of the evidence and all of the fair implications from the statements that were made by these defendants.

What impression was created in the minds of people who heard that representation, who saw those films, who listened to those speakers' presentations?

That is for you to decide; what was a reasonable conclusion for those people to reach with respect to what was being said about the resale potential of this land, what was being said when year after year they were getting letters saying, "Your land has become more valuable." And what does that mean to a reasonable person when they are told that their land has become more valuable?

When Mrs. Switt was told that her land had increased in value so much and she said, "That's terrific, I'll give it back to you for what I paid and you, Rio Rancho, can keep the profit," and Rio Rancho said, "Oh, no, we don't want it back."

What does that tell you?

If this land really had gone up in value the way they kept telling their purchasers, wouldn't they want to take it back for what they paid for it, for what Mrs. Switt bought it for five years earlier if it really had goneup in value? Wouldn't they want to get the profit on it?

But they didn't do it. Why? Because the land really had not gone up in value, there was no resale market for it. And that's what we are dealing with here, the constant representations to these people that their land is going up in value, buy more.

Mr. Fleming refers to Gustav Mols. He says, well, you know, he has money in a Belgium bank.

What does that have to do with this case? Does that mean that Gustav Mols can afford to lose $30,000 that he invested in this land?

And Mr. Fleming says, "So what were we to do?"

I'll tell you what they were to do. They should have told him the truth, and that's all they should have done, and that's all we were asking them to do, to tell them the truth that that land was not as they represented it to be.

Adam Sporzynski, when he got his letter in 1972, long before this investigation ever started, from a local broker saying, "Your land does not have any real value in the Albuquerque market," do you think Mr. Sporzynski didn't know that he was taken then? He didn't have to wait for the government to begin an investigation, he knew.

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That land didn't have value. These defendants continually represented it as a safe, secure financial investment knowing -- knowing -- that there was no resale market for it.

Their own admissions in letters to customers saying, "A resale market is premature." They knew there was no resale market.

If you were buying land for investment, wouldn't you want to know that there had been no resale market for it? And there wasn't any resale market.

If you were buying this land on the representation that it was the only direction that Albuquerqu could grow, wouldn't you want to know that there was sufficient land in and closer to the city of Albuquerque to accommodate even twice the population?

Take Mr. Yguado. Mr. Yguado finally gets it down to 5,000 people. We don't agree with what Mr. Yguado said, but let's take it for the sake of argument.

Mr. Yguado says that in that 100,000 acres that he has paired down you could get, on the density that they want to use, we will use all of their figures, 5,000 people, five. 500,000.

Take that 500,000 figure. In 1962 and '63 the population of Albuquerque was somewhere between 200 and 240,000, and by 1965 it was probably up to about 250,000.

Now, if you were buying that land, as they started to sell it in 1965 as the only direction that Albuquerque could grow was to and through Rio Rancho, wouldn't you want to know that you could put another Albuquerque within the land, taking Mr. Yguado's figures, before you ever would reach Rio Rancho?

They didn't tell them that. They told them that Albuquerque was bursting at the seams.

What does that mean to somebody sitting in New York? Take "bursting at the seams" together with "the only direction it can grow to and through Rio Rancho" and it's very clear what it meant and what they intended it to mean and how they were so successful in selling it, together with telling people year after year, "It's gone up in value."

You look at this annexation map. Mr. Fleming said, bursting at the seams, well, they kept annexing property. That proves the lie. There was property available to annex to the city of Albuquerque without ever reaching Rio Rancho.

Look at where the propertywas that was annexed. In 1960 and 1970 the property that is annexed, and this you can take into the jury room and throw up on

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a projector, look at it, northeast, southeast, northwest, southwest. That is between 1960 and 1970. Hardly the only direction being the northwest.

There are little bits and pieces in the northwest, but the majority of the annexation in that period of time took place in other parts of the city.

Now, if you were investing money in this property, as Mr. Sporzynski was for his retirement, instead of putting it in the bank or in some other form of investment, wouldn't you want to know that? These people didn't think they were going to have to wait untilthe year 2000. If that was the fact, these defendants should have told them that.

Mr. Sporzynski is seventy-one years old. He can't wait for the year 2000 to get his money out. Now Mr. Fleming says, well, he said to one of his investigators he could wait five or ten years. He bought it in 1966. It's now 1977. Is he looking for a quick return on his investment? It's eleven years later and there is no resale market.

Now I said to you before --

MR. FLEMING: I object. The indictment was in 1975.

THE COURT: Pardon me?

MR. FLEMING: I object to 1977. The indictment was in 1975.

THE COURT: That is right.

MS. HYNES: I told you before that the defendants do not have to call any witnesses. The burden is on the government. It is on the government and it is a burden that we accept.

The defendants again told you they were going to prove that there was a resale market and they didn't do that.

The defendants told you that they were going to bring in appraisers --

MR. FLEMING: Object to this, your HOnor.

THE COURT: Overruled.

MS. HYNES: And they did not do that.

MR. FLEMING: I object.

THE COURT: Sorry, overruled.

MS. HYNES: As a matter of fact, Mr. Arkin said, where is the government's appraiser? The government should have brought in an appraiser.

The government didn't have to bring in an appraiser to tell you what the value of that land was.

Mr. Gray got on the stand and he said, "That land had no value to me. I tried to sell it." He tried to sell it long before this case began, and he said, "I couldn't sell it."

Mr. Gray forfeited $15,000. You remember what his testimony was? "I couldn't afford to continue to pay it."

Now, these defendants didn't take that $15,000 of Mr. Gray's and say, "Mr. Gray, you have paid $15,000, here's a deed for this much property." $15,000 right down the tube, took it.

Mr. Fleming makes the point, well, they waited eight months. Terrific, they waited eight months and then they took the $15,000 because Mr. Gray couldn't afford to keep paying for it when he knew he wasn't going to be able to resell it. What was the point? What was the point of throwing good money after bad? That is what we are talking about here.

Let's talk about how fair these defendants were with their customers. Remember the examples in "This is My Land" that has been referred to again and again. If these defendants didn't want to sell this as a financial investmtne that was going to be able to be resold, then I ask you, ladies and gentlemen, there is no reason for these examples to be placed in this pamphlet.

There is no reason to tell people at the dinner and to point out to them that in one year you can make a certain percent of return or if you have five years, it's another kind of return that you can get on it, more money that you can make. Certainly that is what they were telling these people.

But now let's look at these examples. In addition to putting these examples in, Mr. Carruthers testimony was -- it was very interseting in this respect-- Mr. Arkin started complaining, the government doesn't argue that those examples are false. Well, we will accept them as they are given. We will accept the figures, but we do say they are misleading. We do say they are misleading.

For example, the first one is Example A. Mr. Carruthers testified that Example A is Central Avenue in the northeast section of Albuquerque.

Central Avenue in the northeast section of Albuquerque. Central Avenue is Route 66. It's a main drag in Albuquerque and isn't it interesting that the examples they give on how much money you can make is in the northeast -- in the northeast -- not Rio Rancho, not land that is comparable.

In addition, that land was zoned for high density apartments. High density apartments. The defendants

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get apoplectic when you mention high density except when they can use an example to show how much money has been made on land that can be used for high density apartments.

Exhibit C, Quaker Heights. Quaker Heights is on the west side. This pamphlet says "Quaker Heights is a few blocks from Rio Rancho."

Mr. Carruthers said it's five and a quarter miles. Mr. Yguado had to agree with that.

Is that accurate? Is that fair? Is that what these defendants are trying to say to people sitting in New York? They don't know where Quaker Heights is. They don't know what a few blocks is. These defendants knew what a few blocks was.

Where is their fact verifier that they hired in 1972, ten years after they were selling this property? They don't have to call witnesses, but they kept mentioning a fact verifier. Why didn't they put the fact verifier on the stand?

Where was he when Quaker Heights was being described as a few blocks away when, in fact, it is five and a quarter miles?

Example D, again Central Avenue in eastern Albuquerque. Eastern Albuquerque. Commercial property. Is that a comparable example to show somebody at a sales dinner and say, "Look at this," and it shows the kind of money that you can make on land? On buying Rio Rancho land?

Take this into consideration when you consider buying our land.

Example F, Airport Road. Again near Central Avenue zoned industrial.

That is how fair those defendants were being. That is their good faith here that they are trying to convince you that they in good faith were making these kinds of representations to people.

Good faith? You may find otherwise.

Now, I mention to you that what the lawyers say isn't evidence and there is a good reason for that. Let me refer you to what Mr. Arisohn told you yesterday. Mr. Arisohn told you that Mr. Pierce, Al Pierce from the Council of Governments, testified that there were going -- that there were going to be 50,000 people in Rio Rancho. That isn't what Mr. Pierce testified to.

As a matter of fact, if you remember Mr. Pierce's testimony, Mr. Pierce was shown a report and that report is EG. The report had hypotheticals. But when Mr. Arkin was questioning Mr. Pierce, he didn't bring it out as a hypothetical. He didn't bring out the assumptions and there was one hypothetical based upon certain assumptions ard the assumptions were a change in the distribution of population from Bernalillo County shifting up to Sandoval County. That was the basic assumption.

They said, if that happened, and they specifically said in the report:

"However, it should be pointed out that an evenly distributed population might be extremely difficult to achieve by the year 2000" that Sandoval County might get a greater percentage of the population. But they also pointed out,and Mr. Arkin did not, that, in fact, the likelihood was --and this is at page 7 of EG -- that the present population distribution would continue. If that was the case, southern Sandoval County, all of southern Sandoval County by the year 2000 would have 14,000 people in it.

So I tell you, ladies and gentlemen, when you look at the population figures that these defendants are throwing around now for the year 2000, which would be forty years after they began selling this land, look at it closely. Look at the assumptions that are being drawn.

You have the Council of Governments in 1975 or '76, whenever this report was issued, saying in the year

2000 you may have 14,000 people in all of southern Sandoval County.

Now, Mr. Pierce, I haven't heard the defense counsel talk very much about Mr. Pierce in their summations, and I think that there is very good reason for that because Mr. Pierce wasn't terribly helpful to them.

As a matter of fact, Mr. Fleming kept saying, "Listen to the cross examination." Mr. Pierce wasn't very helpful to the defendants on cross examination.

For example, Mr. Arkin asked him:

"Q Mr. Pierce, would you agree in light of the constraints that we have been discussing that the logical pattern of growth of the Albuquerque portion of the urbanizing area, the Albuquerque urbanizing area, is to the west and the northwest?

"A I would like to be precise in terms of time and the target years we use. If we are speaking of ultimate development, I would agree with that statement, yes, sir.

"The Court: What do you mean by 'ultimate development'?

"The Witness: Ultimate development, without specific time periods, sir, but where the area is likely to grown.

"The Court: While I am still alive? I mean you say 'without regard to a time period,' it could be the year 2050, couldn't it?

"The Witness: Yes, sir."

That really focuses the issue here because these defendants are now trying to tell you, well, we were talking about ultimate development. They weren't. They were talking about development now. They were saying, Albuquerque is now at our door, now it's coming to us, it's here. You are not waiting for it for the year 2000, it's here.

Even in this trial they are still trying to convince you and mislead you that that is all that they were saying, but they were saying more. They were saying more. And when you look at their promotional material, when you hear that sales presentation, they were saying more, ladies and gentlemen. That is what got these people to buy it. This is what made these people believe they could resell it and that is what kept these defendants lulling these people on year after year to keep making their payments by saying, yes, it's here, there is a scarcity of land.

You will find, I submit, on the overwhelming evidence in this case that it was the defendants who were misleading; that it was the defendants who were being unfair.

Now, Mr. Fleming went through several of the witnesses that the government called and basically the attitude of Mr. Fleming and Mr. Arkin throughout this trial with respect to the witnesses has really been characterized by the kinds of remarks that they made in their summations. They have really been kind of condescending to them and treating them like they are really lying.

Mr. Fleming referred to the queenly Mrs. Henry in the red dress. The queenly Mrs. Henry. The queenly Mrs. Henry paid $27,000 to these defendants. She wasn't so queenly that they wouldn't take her money, but now she is the queenly Mrs. Henry.

You may find that Mrs. Henry finds it hard to get on that stand with a lot of pride and tell the story of just how she was taken, of just how many dinners she went back to and spent her money and had her sons cutting gross so they could pay off this land and now the defendants want to call her queenly. They want to put her down.

She paid $27,000 to them. That is how queenly she was.

You want to talk about cheap shots. Mr.

Arkin, scratching around in a wastebasket after Mrs. Henry testifies, comes up with a note and you may find --

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MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

MR. ARKIN: I certainly didn't scratch around in waste baskets.

MS. HYNES: Remember this exhibit, the crumpled sheet of paper. Mrs. Henry is confronted with this sheet of paper saying, "Didn't you throw this away after you testified at the luncheon break?"

Mrs. Henry said, "Yes."

"Didn't this have a note to the government on it?"

This is the big exhibit, the big find, the crumpled sheet of paper.

Do you know what it says. "Don't ask what dinner. Hard to remember each one's happenings."

Mrs. Henry went to a lot of dinners. She's simply saying, I can't distinguish one from another. If I have to say it was this dinner, as opposed to that dinner, it's going to be hard.

Do you know what the defendants didn't point out about the queenly Mrs. Henry? Queenly Mrs. Henry also listed on this piece of paper all of the money that she paid to them. Now, that's a list of Mrs. Henry's $27,000 that she paid.

Mrs. Henry owns a great deal of commercial property. Now we also haven't heard a lot about commercial property.

Mr. Fleming talks about Mrs. Mohammed. Remember, he starts off his remarks to you by reading extensively from Mrs. Mohammed to make the point that Mrs. Mohammed, in fact, is really very happy because Mr. Fleming asked her about her residential lot and said, "Mrs. Mohammed, if you can exchange that residential lot into an area with utilities, would you be happy?"

And Mrs. Mohammed says, "I would be satisfied."

Mr. Fleming never asked about the commercial property, did he?

Mrs. Mohammed owns commercial property. Do you know where? Mrs. Mohammed with her nine children, and she testified that she bought the commercial property so she would have income, owns her commercial property in unit 1. Now, that's unit 1 and this is where the development is taking place (indicating). Mrs. Mohammed with her nine children looking for income from that commercial piece of property doesn't have any exchange rights.

Now, isn't that a little oversight by Mr. Fleming not to mention whether Mrs. Mohammed is happy with the piece of commercial property that she bought? He didn't bring that out. He didn't mention that. We haven't heard any mention about commercial property. We just keep hearing questions about whether Mrs. Hampe has a swimming pool, whether so and so sold their house, and none of that is what this case is about.

These defendants just want to throw up these smoke screens and have you shift your attention away from the issue in this case. Why? Because they don't have the answers. They don't have the answers. When they have to come up with a note like this from Mrs. Henry, they don't have the answers. The answers are that there isn't a resale market.

Now Mr. Fleming starts saying, well, the Albuquerque Board of Realtors never really worked. The Multiple Listing Service never really worked at selling it. Where is that proof in this case? They are paid a commission if they make a sale.

MR. FLEMING: Objection.

THE COURT: Sustained, That's an inference he asked to be drawn from the evidence.

MS. HYNES: I submit to you, ladies and gentlemen, that the inference is to the contrary. That the Multiple Listing Service, through the testimony of Ron Williams, distributes its listings to all of its brokers. If there was a resale market for Rio Rancho land, there is no reason for you not to infer that that land would not have been sold and realtors would have been happy to sell that land.

Now, we talked about the development of the property and let me go into that. Mr. Avellanet testified that these defendants did not intend to develop the entire 55,000 acres. At that time he was only dealing with 55,000 acres. That is his testimony and I will read to you:

"Q Was it your impression that the people from Rio Rancho" --

MR. ARKIN: Your Honor, we object to that. There is no testimony that Mr. Avellanet said that.

MS. HYNES: I am reading from his testimony, Mr. Arkin.

"Q Was it your impression that the people from Rio Rancho had serious intentions of developing the entire 55,000 acres?

"A Clearly not.

"Q Can you explain that to the judge and the jury, please?

"A Rio Rancho operated on the operating assumption that 5 per cent or less of the people would come and they set aside this land as a reserve to accommodate actual development for people who bought lots and would want to live in Rio Rancho Estates' development. There was no intention to the best of my knowledge of developing the whole 55,000 acres. I know -- I was told that there was -- Rio Rancho had sufficient water at that time for at least 4,000 homes which worked out to be roughly 5 per cent of the sites that might be utilized. The 5 per cent of the buyers who might come."

Now, Mr. Lavinsky in his summation pointed out that Avellanet gave a preliminary report to Rio Rancho which mentioned some 14,000 dwelling units for the national market, but Mr. Avellanet testified that after he gave that report in November of '65, in December of '65, he had the meeting with Mr. Oberman, with Vince Sommerholder and Mr. Walsh and that's when Mr. Oberman gave him the real low-down. That's when Mr. Oberman said, "Looking at his figure of 14,000," he said, "wait a minute, it's 5 per cent that we expect." So that meeting took place after Mr. Avellanet's preliminary report.

That's stated -- that 5 per cent figure is stated in the final report that Mr. Avellanet gave to the client and which Mr. Howard Friedman, Mr. Henry Hoffman and Mr. Chester Carity all reviewed. That report at page 34 states: "Personnel of Rio Rancho reported that American Realty & Petroleum operations in Florida showed this pattern of 10,000 acres divided into 18,000 lots and sold about six years ago" -- he is referring to Rainbow Lakes Estates -- "only 300 residences have been constructed." Another Florida sales operation of about 1400 acres reports only 60 homes in existence after 20 years in operation.

Do you recall that Mr. Perlmutter testified that today at Rainbow Lakes Estates there is approximately 570 homes on 18,000 lots?

So, the 5 per cent figure was a figure that Mr. Avellanet was given by the people from Rio Rancho Estates.

The point of this, ladies and gentlemen, is that these defendants didn't believe that the entire 55,000 acres, much less 19,000 acres, would ever be developed. They didn't believe that. Contrary to what they were telling people at these sales dinners, and their actions speak much louder than their words, they set aside only a certain amount of land and that was the land where the exchange areas were going to be.

Mr. Lavinsky testified that that was set aside because you should have scattered --

THE COURT: Mr. Lavinsky didn't testify.

MS. HYNES: I am sorry, I misstated myself.

Mr. Lavinsky stated that you should have these exchange areas to prevent the scattered development.

Keep in mind that the exchange right does not apply to commercial lots. It does not apply to multiple dwelling lots and it does not apply to ranchettes.

Moreover, there are not enough lots available so that these defendants can meet their contractual obligations.

You have heard a great deal about how these defendants have met their contractual obligations. Well, the contract says, if utilities have not reached your lot, then you can exchange.

Now, it's true when people were buying this land they understood that it was not developed at that time, but they believed that utilities would eventually reach their lot. Their contract said, if utilities don't reach your lot, then you can exchange, but the exchange was the fall-back. They clearly believed that eventually utilities would reach their lot. If it hadn't, then they could exchange.

The price included thecost of utilities. They were paying for utilities when they were buying this land.

But the evidence is that there are not enough lots that are set aside to allow each lot that has been sold, each residential lot, home site lot to be exchanged

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in. These defendants simply did not have the belief themselves. They really believed that only a small per cent of the people would come and would move and that Albuquerque was not going to cause the full development of Rio Rancho.

If you look at their actions, their actions speak much louder than their words here because, based on the computer printouts that are in evidence, and that's 883, giving the defendants the benefit of the doubt, they have sold off 77,000 lots, there are roughly 18,000 lots available which could be utilized for exchange.

Now, if a customer traded in a lot to the people who did go into those building areas, Mr. Zaknich testified that when you gave that lot back, it was put back into inventory and resold. Not what Mr. Arisohn told you yesterday, that the lots were held out for further exchange areas. That wasn't the testimony.

The testimony was, through Mr. Zaknich, that those lots were put back into inventory and resold. So as of today, as we sit here, there are 18,000 lots that could be available for exchange that haven't been sold off.

Now, a couple of things. If you took the highest projection for homes that Rio Rancho has given, which is 350 to 400 homes per year, it would take 45 years to fill those 18,000 lots, but once those 18,000 lots are filled, what happens? I will tell you what happens.

Ms. Cross stated yesterday that in the offering statements filed with New York that they couldn't contain anything that the defendants didn't believe. The offering statement for New York -- and this is only the New York offering statement -- at page 8 under the "exchange privilege" states the following:

"The possibility exists at the time the purchaser is entitled and wishes to make such an exchange there will be no lots in the improved area available for exchange. In such event, the purchaser may retain the lot he purchased or tender its return to the company and receive a refund of all moneys paid. Refunds will be contingent upon the company's ability to repay."

The company hasn't set aside any money to repay.

In 1002, which is a HUD property report in May of '75, it states: "The developer has not set aside money or entered into any bond or escrow arrangement to assure the extension of utility lines to future building areas."

That's even money set aside to insure the extension of utilities to building areas. It's very clear, once those exchange areas are filled up, that's it. They cannot meet their contractual obligation. They never planned on having to meet their contractual obligation.

It's like an advance fee. They charge you for utilities, they sell it to you as a financial investment, most people they know aren't going to move, they know thatonly a small per cent are going to come and actually relocate, maybe they will get lucky and get some people from the Albuquerque market, so they have set aside some land and that's a profitable enterprise for them. That community, sure, they are making money on it. They are building houses based upon demand, and whatever the demand is until the building areas are filled up, if they ever are, if they ever are, and then what happens? Then you have got the land, the 77,000 lots, sold off to people throughout the country.

What does that sound like? Sound familiar? Sound like North Albuquerque Acres? Sound like Mr. Graham testifying that the difficulty is that you can't find Aunt Jenny or cousin Sarah. You have got individual owners scattered throughout the country, which makes it difficult to reassemble that land, and the utility companies, and these are also exhibits in evidence, have stated that they will not put utilities in areas until there is a sufficient demand for utilities, until there are a sufficient number of houses built.

Well, if one lot is sold to Mrs. Jones in New York and lot two is sold to Mrs. Smith in Cleveland and they are spread throughout 37 staes, you have got the same situation that you have in North Albuquerque Acres.

I agree with Mr. Lavinsky, the exchange does prevent the scattered development, but the fact is that after you fill up those exchange areas, you have got the same problem as North Albuquerque Acres. These defendants can't have it both ways.

This is the shell game that they are playing with you.

THE COURT: You have five more minutes, Ms. Hynes.

MS. HYNES: Ladies and gentlemen, I said to you in my opening statement the 1962 SEC statement says, and it turns out to be true, that the unsold land may be considered raw land which is to be improved by the company only by the construction of roads. That's this (indicating_. That's how it is today. That's how it was in 1962 and that's how it is going to remain because that's not the exchange area.

MR. FLEMING: Objection.

MS. HYNES: That's not the exchange area.

MR. FLEMING: I object.

THE COURT: Sustained. There is no proof in this record that that's how it is going to remain.

MS. HYNES: Your Honor, I would argue that the jury could infer from the statement in the offering statement --

THE COURT: You are cutting down your time. You are down to four minutes. I suggest you wind down.

(Continued on next page.)

MS. HYNES: Ladies and gentlemen, the people who bought the commercial land in this case do not have an exchange right.

Mr. Gusowsky paid $21,000 for a ranchette. Mr. Morden paid $15,000 for his piece of commercial property. Mrs. Henry, queenly Mrs. Henry, has $32,000 of commercial property. Mrs. Bonavisa has $6,000 worth of commercial property. And the list is long, ladies and gentlemen.

Those people do not have the exchange right which these defendants very glibly say that is what gives the value to this land.

Well, it does not give the value to the land. They don't have enough lots set aside, the commercial lots don't have --

MR. FLEMING: I object to that.

MS. HYNES: -- the exchange rate.

THE COURT: Sustained.

MR. FLEMING: I object to that. There has been no proof on that.

THE COURT: Ms. Hynes?

MS. HYNES: Mr. Olguin, Mr. Arisohn or Mr. Arkin, I don't remember which now, stated that the reason why the auction was such a dismal failure was that there was publicity about this case. The testimony

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is exactly to the contrary.

Mr. Olguin was asked at page 5007:

"Q By the way"-- this was on cross examination -- "by the way, at the time this auction took place, do you recall seeing anything in the Albuquerque newspapers or elsewhere that Rio Rancho was being investigated?

"A No, sir.

"Q Do you recall seeing anything in the paper about an investigation involving Rio Rancho?

"A No.

"Q Did you ever tell anybody that prior to August of 1975 you personally and other people to your knowledge in Albuquerque knew that Rio Rancho was under grand jury investigation in New York?

"A I had no knowledge of it. In August of 1975, I had no knowledge that Rio Rancho Estates was being investigated."

Another question:

"Q Was the resale market for Rio Rancho land in Albuquerque in August of 1975 the same as it had been during the previous five years while you were in the real estate business?

"A Actually, there hasn't been any resale market of Rio Rancho property in the Albuquerque area.

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"Q Over what period of time?

"A At any time.

"Q Since you have been in the real estate business?

"A Since I have been in the real estate business."

Ladies and gentlemen, there was mention made, and I will just touch on it briefly because my time is limited, there was mention made of the tours.

People weren't told the truth on the tours. The same lies were repeated.

MR. FLEMING: I object to that. I object to that statement.

THE COURT: Sustained.

MS. HYNES: Ladies and gentlemen, Mr. Daniel Monaco made the following statement on the stand, and Mr. Monaco, again, the defendants have agreed was giving honest testimony, and this was at page 2199:

And this is what he told people when, after the purchase of the additional land, after 1971, this is what he told people on the tour.

"And I must tell you," at page 2199, "that you are most fortunate to be here at this time, because in the past years, and as recently as a year ago or two

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ago, when we brought our people out here to Rio Rancho and we sold them additional land, and they asked the question most often and very logically, when will I be able to realize a profit from my land ownership at Rio Rancho, or at one time it was when will I be able to realize a profit from my investment here at Rio Rancho, and our answer, in all honesty, had to be, 'I don't know,' because as long as we ourselves are selling land at Rio Rancho, there cannot be an effective resale market for our investors.

"And I say that you are most fortunate because at this time because at this time we are reaching the so-called end of the trail, the end of the road as far as available property at Rio Rancho, and I can assure you that we will be here to assist you and advise you so that you can realize the full potential of your land ownership at Rio Rancho."

The clear implication is that people are told that once the property is sold out, there is going to be a resale market.

People are also told that there should be a resale market even if the property isn't sold out, because they can get a certain percentage return on their investment.

MR. FLEMING: I object to that.

MS. HYNES: Based upon the evidence in this case --

THE COURT: Overruled.

But, Ms. Hynes, this is your last minute.

You said before you sounded like a broken record and I have to agree with you. All I have heard is resale for forty-five minutes. And this hour time is allotted at your request. You fixed the time, I didn't.

MS. HYNES: Ladies and gentlemen, I urge you to take the exhibits, take the confidential survey, take the maps, take the speakers' scripts, take the film, listen to them. Put yourselves in the position of people sitting at dinners.

Put yourselves in the position of people who started giving their money to this company because they believed they had a good financial investment and consider all the facts which you heard in this case, consider all of the testimony that you believe is credible testimony, and you, I submit, will find that these defendants knowingly engaged in a scheme to obtain money from people by false and fraudulent pretenses, which is what is charged in the indictment, and you can find this based upon the evidence in this case --

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MR. FLEMING: I Object to that, your Honor.

MS. HYNES: -- the evidence in this case beyond a reasonable doubt.

I thank you very much for your attention.

THE COURT: The jury is excused until tomorrow morning at 10:00 o'clock.

(Jury left the courtroom)

MR. FLEMING: If your Honor please, may we just have a couple of moments.

THE COURT: Yes.

MR. FLEMING: If your Honor please, Ms. Hynes argued the physical impossibility of developing Rio Rancho. The government, in its case, which ran I forget how many weeks but it certainly was a long time and it was closed at their discretion, did not deal with that issue at all. They offered no evidence on that issue.

It was a totally improper argument and I ask for a mistrial.

THE COURT: Denied.

MR. ARKIN: Your Honor, I know that your Honor's charge must be by now complete and ready to deliver, but might I ask a couple of questions or perhaps make a couple of requests? It will just take a moment or two.

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THE COURT: Go ahead.

MR. ARKIN: First, I take it with respect to our Request No. 30, which had to do with value and purchase price and eventual selling price which your Honor denied, unless the government made an argument with respect to that, that will be given now?

THE COURT: I am not sure in the version which you request, but I will take it under advisement.

MR. ARKIN: Also your Honor has ruled earlier on in this case that the failure or omission to state that there was a limited or a non-existent resale market, whichever the case may be, was not a crime, was not a fraud and you struck that portion of the indictment and made that ruling.

Is your Honor going to instruct the jury similarly that there was no duty on the part of the defendants to advise anybody of the absence of a resale market or the existence of a modest resale market?

THE COURT: No. That is not involved in the claim that is made here.

They claim the affirmative representation was that there would be a resale market, and that is what the jury would have to find.

MR. ARKIN: Well then, your Honor will

instruct them the omission was not a crime?

THE COURT: I will not instruct them on that at all.

MR. ARKIN: Also if your Honor please --

THE COURT: The government has to prove the affirmative representation.

MR. ARKIN: I understand what your Honor is saying and I made the request and I understand your Honor's ruling.

Also with respect to the timing in this case, since we have a charge which dates from 1961 to the present time and yet the statute runs from, say, October 1970 to the time of the filing of the indictment, will your Honor instruct the jury that if they are going to make a finding of misconduct, if they find evidence to make it, it must be within the statutory period?

THE COURT: No, because it is not necessary under the proof in this case.

MR. ARKIN: With respect to your Honor's comments earlier this morning regarding the state agencies' or governmental agencies' review of material submitted to it, I take it that your Honor is going to instruct the jyry that the state agencies' review, based on submitted materials, is such that they do not pass upon the merits

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of the offering --

THE COURT: The truth or falsity of the statements contained in there.

MR. ARKIN: But I take it your Honor will give an instruction that it bears upon -- the submission and the use of these materials only with permission given buyers upon the good faith of my clients?

THE COURT: That is the basis upon which I told you when I ruled on your request to charge last Friday.

MR. ARKIN: That's what I have to say right now, your Honor.

THE COURT: All right.

MR. FLEMING: If your Honor please, I don't want to -- I would request an instruction -- I will get these to your Honor in writing -- one, Ms. Hynes talked about Mr. Gray stopping his payment. He stopped payment after the indictment. I would like the jury told that, since we have no rebuttal to her rebuttal.

Two, if your Honor please, the Quaker Heights three block matter I understand is not charged as a misstatement in this indictment and I would like the jury so instructed.

THE COURT: No, I won't instruct that. That

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is just an item of proof.

I don't charge the jury on every item of proof.

MR. FLEMING: And I would like to have the opportunity, your Honor, to prepare a request instruction on the issue of feasibility raised by Ms. Hynes.

THE COURT: The issue of feasibility?

Have it to my chambers by 9:00 o'clock tomorrow morning.

MR. FLEMING: Thank you very much, your Honor.

(Adjournment taken to January 20, 1977, at 10:00 o'clock a.m.)

end day

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

January 20, 1977
10:30 A.M.

Trial Resumed

(In open court - jury not present)

THE COURT: Good morning.

I have here a request to charge from Mr. Fleming. I assume you served a copy on the government.

Ms. Hynes, what do you have to say about that?

MS. HYNES: Your Honor, I believe the request should be denied. The argument was made --

THE COURT: Wait a minute, where is it?

MR. FLEMING: I have a copy.

THE COURT: Yes.

MS. HYNES: The government argued in its initial summation that there were not enough lots set aside in the exchange area. We referred to, I believe, the map in evidence and Mr. Avellanet's testimony that the defendants didn't expect to develop the entire 55,000 acres.

During, I believe, every defense summation, with the exception perhaps of Ms. Cross, there was a reference to the defendants' good faith; that they intended to develop this entire subdivision and Mr. Lavinsky went into the exchange provision, the scattered development and their expectation of developing this community and that the jury should consider that as good faith.

Mr. Arisohn went into the same argument, referred to the computer printout, which is 885, anticipated and said to the jury that you can anticipate that Ms. Hynes will argue to you that there are not enough lots set aside, made the reference to the exhibit in evidence, and that appears in Mr. Arisohn's argument--

THE COURT: Ms. Hynes, that is not the point of Mr. Fleming's request to charge.

MS. HYNES: The request to charge --

THE COURT: It is impossible -- not intended-- there is a difference between whether the defendants had the intent to complete or not or whether they had the ability to complete. You coupled that statement with the statements in the HUD report saying they had not bonded the cost of bringing utilities in.

You coupled that with the statement that if utilities do reach the lots, why the purchasers could turn their land back and get their money back.

Mr. Fleming's argument, I think, is that you were telling the jury that they did not have the money to do it. Not that they didn't intend to. That is one argument.

You said it was impossible to carry out the contractual obligations.

Mr. Fleming, is that the point of your request?

MR. FLEMING: That is the point, if your Honor please, yes, sir.

THE COURT: That is the point. Not the intent, the inability to.

MS. HYNES: Your Honor, I am referring to the argument that I made --

THE COURT: I am referring to Mr. Fleming's request to charge upon which I have to rule. I am asking you to meet that.

MS. HYNES: Your Honor is doing it on the basis of what I said to the jury and I said to the jury that these defendants simply did not have the belief themselves.

THE COURT: I am sorry, that is not the portion of the transcript. He is referring to 7780.

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MS. HYNES: 7780, your Honor?

THE COURT: Yes, in which you quote from the New York State offering:

"In such event, the purchaser may retain the lot he purchased or tender its return to the company and receive a refund of all monies paid. Refunds will be contingent upon the company's ability to repay."

MS. HYNES: Yes.

THE COURT: You say the company had not set aside any money to repay.

MS. HYNES: That is right.

THE COURT: You go on to Exhibit 1002, which is a HUD property report of May '75 in which it states:

"The developer has not set aside money or entered into any bond or escrow arrangement to assure the extension of utility lines to future building areas.

"That's even money set aside to insure the extension of utilities to building areas. It's very clear, once those exchange areas are filled up, that's it. They cannot meet their contractual obligation."

Not that they didn't intend to, but they cannot meet it because they don't have the money to do it.

That is the import of that sentence.

MS. HYNES: "They never planned on having to meet their contractual obligation."

THE COURT: Mr. Fleming isn't worrying, about your next sentence. He is worrying about your sentence in which you say they cannot meet it, not that they did not intend to.

Your argument they did not intend to, the defendants have said, we did intend to, but you have put an additional factor after quoting the two portions of the reports that I have just referred to, you said, they cannot meet it and the impression is they did not have the money to do it, they did not set it aside.

MS. HYNES: Your Honor, my argument was that they said in their New York offering statement that you could get a refund contingent upon the company's ability to pay. I was referring to the HUD exhibit to show that.

Then I said, and they have not set aside any money for that contingency. To support that on the basis of the report, I pointed out that even with respect to further extension of utilities in building areas, they had not set aside money for that and they had not set aside money for refunds if they couldn't.

THE COURT: You said they did not bond it. I don't know what the failure to bond has got to do with ability.

MS. HYNES: Your Honor, I was referring to the HUD report --

THE COURT: Are you arguing to this jury that these defendants did not have the money to carry out their contractual obligations?

MS. HYNES: I am arguing that the defendants did not set aside money to take care --

THE COURT: Who said they didn't set aside money?

MS. HYNES: Pardon?

THE COURT: Where in the record do you find that they didn't set aside money?

MS. HYNES: That is why I was relying upon 1020.

THE COURT: That doesn't prove anything. The fact that I didn't bond it doesn't mean I didn't set it aside, Ms. Hynes.

Are you arguing to this jury that these people could not possibly meet it or didn't intend to meet it?

MS.HYNES: I am argung they did not intend to meet it.

THE COURT: Mr. Fleming said you used an

argument in your summation from which the jury could infer or you wanted the jury to infer additionally that they could not have met it.

MS. HYNES: In terms of number of lots, your Honor.

THE COURT: That is not what you said, Ms. Hynes. I must say that as you were talking my ears perked up and I was waiting for this objection, which never came in the form of the request, I think, because that is the impression I got. You were saying they didn't have the money to do it.

MS. HYNES: Your Honor, the request --

THE COURT: I am going to tell the jury it is not the government's contention that the defendants did not have the financial ability to meet their contractual obligations.

It is the government's contention that they did not intend to meet them.

MS. HYNES: We do not concede that they had the financial --

THE COURT: You haven't shown anything in the record.

MS. HYNES: Let me finish, your Honor.

THE COURT: Point in the record where you can make that statement.

MS. HYNES: Let me first make my argument.

THE COURT: No, I want to know in the record where you can point to.

MS. HYNES: They do not have --

THE COURT: I don't want to spend all day doing this, Ms. Hynes. Point in the record.

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MS. HYNES: The offering statement says that the refund, if they don't have an exchange lot, is contingent upon their ability to pay.

THE COURT: Right. That doesn't mean they couldn't pay. You said in your argument to the jury they couldn't. That's the point of Mr. Fleming's request.

MS. HYNES: I said that they have not set aside money.

THE COURT: I have ruled. I will tell the jury it is not the government's intention or, if you don't like that, then I will tell them that you were wrong in making that statement.

MS. HYNES: Your Honor, will you just state what it is your are going to say is not the government's contention?

THE COURT: That these defendants did not have the ability to carry out their contractual obligations or that they did not intend to.

MS. HYNES: Are you talking about financial? Your Honor, can we just have a minute, please.

(Pause.)

MS. HYNES: Your Honor first stated that you were going to state to the jury that the government does not contend that the defendants did not have the financial ability to meet its contractual obligations, but, rather, that the government contends that the defendants did not intend to meet their contractual obligations.

THE COURT: That's right.

MS. HYNES: Okay.

THE COURT: Don't argue with me that you really meant that to the jury.

Is there anything else that's open besides that, Mr. Fleming?

MR. FLEMING: No, sir.

THE COURT: I think you made some statement yesterday about Grey. My checking of the record shows that Grey stopped payment.

MR. FLEMING After the indictment, I thought, your Honor.

THE COURT: No, it was after receiving the letter from the government.

MR. FLEMING: The questionnaire from the United States Attorney's office, that's what it was.

THE COURT: That's what it was, but he tried to sell it before that time unsuccessfully.

THE COURT: We will have a short recess. I have to find a place to put this in.

By the way, I thought that I would give to the jury the pages from the redacted indictment, which set forth the counts that are still before the jury, so that they would know what they are looking for. I don't detail each count by name and mailing in the charge because I think it is just a long recitation of factual material. I intend to give them these pages from the redacted indictment which show the counts that are still in the case for their determination.

Is that all right with the defendants?

Do you have a copy of the redacted indictment?

MR. FLEMING: I don't, your Honor. I wasn't questioning that part. I think that's all right.

THE COURT: Because I am not going to read to this jury count after count. It would be a long recitation, which would be meaningless to them in any event. They would still have to have something like this before them.

MR. FLEMING: I agree with that. The whole indictment or whether just the counts should go to the jury --

THE COURT: I won't send them the indictment in.

MR. FLEMING: I remember what your Honor said the other day.

THE COURT: If they request it, I do.

Yes, Ms. Hynes?

MR. FLEMING: May I see a copy of that?

THE COURT: Yes.

MS. HYNES: In our request 17 under the Interstate Land Sales Act, certainly with respect to the mail fraud counts, they have heard testimony and they will identify it in their own minds. With respect to the interstate land sales counts, those exhibits were received in evidence and there was no point in reading them to the jury, but they have been received in evidence.

Our request number 17 makes specific reference that with respect to the six counts before you charge violations of the Land Sales Act, the government has introduced evidence of Rio Rancho commercials which were aired on radio and television on those days. Without some kind of reference to that, the jury, with the state of the record now, would not be aware of it.

THE COURT: That's taken care of, Ms. Hynes.

MS. HYNES: Thank you.

MR. FLEMING: Your Honor, I am sorry.

THE COURT: Yes.

MR. FLEMING: This is okay as far as I am concerned except that Count 41 is Mrs. Lilian "Sender" and that should be Mrs. Lilian Seder and I would like that spelled correctly.

THE COURT: I will make the correction myself.

That was corrected on the record, as I recall.

MR. FLEMING: It is S-e-d-e-r.

THE COURT: What is the number, Mr. Fleming?

MR. FLEMING: 41, if your Honor please.

THE COURT: Mrs. Lilian Seder, S-e-d-e-r.

MR. FLEMING: S-e-d-e-r.

MS. HYNES: That's correct.

THE COURT: All right.

MR. FLEMING: I actually think that the redacted indictment should have numbered the counts in order.

THE COURT: I said I wanted the numbers that they were. The jury knows they were dismissed. I am going to tell the jury counts have been withdrawn from their consideration.

MR. FLEMING: Because no witness testified?

THE COURT: No, I am just saying they were withdrawn. The fact that they were withdrawn is no consideration of theirs and shouldn't bear on their determinations. The same sort of a charge that I gave on the dismissal of the three defendants at the end of the government's case.

MR. FLEMING: I would respectfully request that you instruct the jury that the counts were withdrawn or dismissed, whichever language your Honor wants or whichever language the government wants, because no witness was produced to support that count.

THE COURT: No, I won't give that charge.

MR. FLEMING: I just don't want the inference that some counts were dismissed on a judicial finding of insufficiency --

THE COURT: No, I won't give them the charge that you request. I will give them the usual charge that I gave at the end of the government's case.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

THE CLERK: Ladies and gentlemen, the court is about to charge the jury. If there are any spectators who wish to leave the courtroom, they may do so now or will remain seated until the completion of the court's charge.

Will the marshal please lock the door.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury:

We have now reached the point in this trial where you are about to enter upon your final function as jurors, which is, of course, one of the sacred duties of citizenship.

You have given careful attention to the evidence during the course of the trial and I am certain you will conduct your deliberations in the same fine spirit that you have so far displayed and with impartiality and fairness reach a just verdict in this case.

In our court system, the functions of the judge and the functions of the jury are clearly defined.

It is my duty to instruct you as to what the law is; it is your duty to accept the law as I state it to you.

Just as I am the exclusive judge of the law, so you are the exclusive judges of the facts. You alone determine the credibility of the witnesses and the weight, effect and value that should be given to their testimony.

It is up to you to determine from the evidence you have heard what the facts are in this case, and from those facts decide whether a defendant has violated the law.

This is a criminal prosecution in which the government is one party and the defendants are the others.

The fact that the government is a party entitles it to no greater and to no lesser consideration than any other party. It is entitled to the same consideration as given to the defendants; no more and no less.

The case must be decided within the scope of the charges against each defendant as contained in the indictment, but before discussing the law applicable to the charges of this indictment, let us consider some general principles which apply to every criminal case.

An indictment itself is not evidence. It merely describes the charges made against the defendant and may not be considered by you as evidence of the guilt of a defendant. Nor can the fact that a grand jury has found this indictment in any way detract from the presumption of innocence with which the law surrounds a defendant, unless and until his guilt is proved beyond a reasonable doubt.

55 of the 80 counts charged against the seven defendants still before the court have been withdrawn from your consideration. Later on in this charge I will discuss with you in detail the 25 counts which remain.

As you already know, the charges against Herman Oberman, Irving Blum and Solomon Friend have likewise been withdrawn from your consideration.

These dispositions should not be considered or discussed by you, nor should they influence you in any way in passing upon the guilt or innocence of any of the defendants on the counts in the indictment which are being submitted to you for your determination.

Each of the 25 counts alleges the commission of a separate and distinct offense. It will be necessary for you to reach a verdict of guilty or not guilty as to each of the defendants separately on each of the 25 counts.

You must consider and weigh the evidence separately as to each defendant on each count.

The fact that you may find any defendant guilty or not guilty of one of the offenses charged should not control or influence your verdict with respect to any other offense of which the defendant is charged or to a charge against any other defendant.

You have noticed throughout this trial that certain defendants are represented by the same counsel. Each defendant is entitled to your separate consideration even if represented by common counsel. The question of guilt or innocence is personal and must be decided by you as to each defendant individually.

Each defendant has denied the charges in the indictment. By the plea of not guilty, each defendant has put into issue every material fact alleged in the accusations brought against him or the corporations. Accordingly, the government having made the charge, has the burden of proving beyond a reasonable doubt each material element of each count of the indictment. This rule applies to each defendant individually as to each of the charges in the indictment. This burden of proof never shifts. It remains with the government during the entire trial and during your deliberations as jurors.

A defendant does not have to prove his innocence. A defendant is presumed to be innocent, and this presumption is overcome only when you reach a conclusion from the evidence that his or its guilt has been established beyond a reasonable doubt.

Now, what is meant by reasonable doubt?

There is nothing mysterious about the term. It means, as the words themselves indicate, a doubt based upon reason and common sense which arises after consideration of all the evidence.

Reasonable doubt is a doubt which would cause reasonable persons to hesitate to act in matters of importance to themselves. It is not a vague, speculative, imaginary something, and a person may not be convicted on mere suspicion or conjecture. On the other hand, a reasonable doubt does not exist merely because a juror does not wish to perform an unpleasant duty.

A reasonable doubt may arise not only from evidence produced, but also from a lack of evidence.

A defendant may also rely upon evidence brought out on cross examination of any of the witnesses who have testified on behalf of the government. He may raise a reasonable doubt in your mind as to the existence of one or more of the essential elements of the crime without affirmatively presenting his version of all or any of the facts. This is so because the law does not impose upon a defendant a duty to produce any evidence.

The defendants did not testify in their own behalf in this case. The law does not compel a defendant to take the witness stand and testify because the burden of proof is solely on the prosecution.

Now, it is not necessary for the government to prove the guilt of a defendant beyond any possible doubt. Proof is usually not a matter of mathematical or absolute certainty. In the nature of things, it cannot be. But to sustain a conviction, there must be such proof as satisfies your reason as intelligent people beyond any reasonable doubt that the defendant is guilty as charged.

If you do not have a reasonable doubt of a defendant's guilt as to the material elements of a charge, then you should return a verdict of guilty on that count.

If, on the other hand, you do have a reasonable doubt as to a defendant's guilt as to any of the material elements of the crime charged, then you must return a verdict of not guilty as to that defendant on that count.

The law provides that anyone who uses the mails in furtherance of a scheme to defraud is guilty of a crime.

The law also provides that anyone who employs a scheme to defraud in connection with the sale of subdivided lots and uses an instrument of communication in interstate commerce in offering the sale is guilty of a crime.

Briefly stated, the indictment charges that sometime between 1961 and 1975, the defendants AMREP Corporation, Rio Rancho Estates, Incorporated and ATC Realty Corporation, acting through their officers, directors, employees and agents, devised a scheme to defraud purchasers of land at Rio Rancho Estates.

The scheme to defraud in this case is alleged to have been that the defendants made a false claim as to the investment value of the purchase of land at Rio Rancho and made a false claim as to the direction and extent of growth of Albuquerque knowing the claims to be false.

The indictment charges that the defendants Daniel Friedman, Howard Friedman, Chester Carity and Henry Hoffman were individually involved in the scheme to defraud.

Daniel Friedman was an officer of AMREP and Rio Rancho starting in 1968, and also became a director of AMREP in 1972. He was secretary of the ATC Realty Corporation for the year 1971.

Howard Friedman was at all times an officer and director of AMREP and Rio Rancho and was an officer and director of ATC Realty through 1971, at which time he continued only as a director.

Chester Carity was at all times an officer and director of AMREP and Rio Rancho, he was an officer and director of ATC Realty through 1970 and, again, in 1972 and 1973. In 1971 and 1974 and 1975, he was only a director of this corporation.

Henry Hoffman was an officer and director of AMREP through 1974 and only a director in 1975. He was an officer of Rio Rancho through 1973 and a director at all times. He was a director of ATC Realty from 1963 to 1969.

AMREP Corporation was the parent corporation of both Rio Rancho and ATC Realty and owned all the stock of both of these companies.

The indictment charges that in furtherance of this scheme to defraud, each of the defendants caused specific matter to be sent through the U.S. mail. Each mailing, although related to the single scheme to defraud, forms the basis of a separate charge.

In order to find a defendant guilty under a count charging violation of the mail fraud statute, the government must establish beyond a reasonable doubt each of the following essential elements:

One, that a scheme or artifice to defraud or to obtain money by false and fraudulent pretenses, representations or promises as alleged in the indictment was devised by the defendants, or any one of them.

Two, that the defendant knowingly and willfully participated in the scheme or artifice to defraud with knowledge of its fraudulent nature and with intent to defraud.

And, three, that as to each count there occurred the use of the mails in furtherance of that scheme.

Now let us consider each element separately.

The first element of the offense is the existence of a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretenses, representations or promises.

The language describing this first element is almost self-explanatory:

A scheme or artifice is merely a plan or a pattern for the accomplishment of an object. Proof of an isolated misrepresentation alone is not sufficient to constitute a scheme to defraud:

Fraud is a general term which embraces all the various means which human ingenuity can devise and which are resorted to by any individual to gain advantage over another by false representations, suggestions or suppression of the truth.

A pretense, representation or statement is fraudulent if it was falsely made with intent to deceive.

A statement may also be fraudulent if it conceals material facts in a manner that makes what is said deliberately misleading.

An opinion or prediction as to future events is not fraudulent if there is reasonable basis for such opinion. An opinion or prediction is fraudulent if you find there was no reasonable basis to sustain it or that a defendant knew that the opinion or prediction was misleading as to a material fact.

A material fact is one to which an average reasonably prudent buyer might attach importance in deciding whether or not to buy Rio Rancho land. However, mere puffing, exaggerating, enthusiasm or high pressure salesmanship by itself does not constitute fraud.

A scheme to defraud can exist even in the absence of an absolute misstatement as to a single fact if the promotional material and sales representation, when considered in its entirety, can be found to have been intentionally designed to mislead those exposed to it.

The government is not required to prove that the alleged scheme to defraud existed over the whole course of time set forth in the indictment. It is sufficient if you find that at any time within that period all of the elements of the alleged scheme to defraud have been proven to your satisfaction beyond a reasonable doubt.

The fact that the government may not have proved that the scheme to defraud was carried on as early or as long as the indictment alleges is not of any importance so far as the elements of the crime are concerned.

Under this first element, it is enough that such a scheme existed. It is not necessary for the government to prove that any of the purchasers actually suffered damage.

If you find that a false statement was made, you must further find that it was false at the time it was made. Hindsight is not the measuring rod in this case.

If you do not find beyond a reasonable doubt that a scheme existed to defraud purchasers of land at Rio Rancho, which included either a false claim as to the investment value of the purchase or a false claim as to the direction and extent of the growth of Albuquerque, you must acquit the defendants.

(Continued on next page.)

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The second element which you must find beyond a reasonable doubt is that each defendant knowingly and wilfully participated in the aforesaid scheme or fraudulent conduct with intent to defraud.

You may find that a defendant acted knowingly and wilfully if he acted voluntarily and purposely and with specific intent to do something which the law forbids, that is to say, that he must have acted with evil motive or bad purpose to disobey or to disregard the law and not because of negligence, mistake, inadvertence or other innocent reason.

It is obviously impossible to ascertain or prove directly what a person knew or intended. You cannot look into a person's mind and see what his intentions were or what he knew. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case as to a person's actions and statements enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing or not doing certain things and the state of his knowledge.

It is not required that each of the schemers participate in or had knowledge of all of the operations of the scheme. The guilt of the schemer is not governed by the extent of his participation. It is not necessary that all schemers have participated in the alleged scheme from its inception.

A person who comes in at a later point with knowledge of the scheme's general operation, although not necessarily all of its details, and who intentionally acts in a way to further the unlawful goals becomes a member of the scheme and is legally responsible for all that may be or has been done in furtherance of the criminal objective.

Even if a defendant participated in the scheme to a degree less than that of his fellow schemers, he is equally culpable, as long as he became a member of the scheme with knowledge of its general scope and purpose. Nor is it necessary that a defendant receive pecuniary benefit from his participation in the scheme as long as he, in fact, was a member of the scheme.

Since some of the defendants here are corporations, it seems appropriate at this point in the charge to mention the subject of a corporation's responsibility.

Your problem, of course, is to determine whether this corporation has done the things charged in the indictment by virtue of and through the acts of its officers, directors or its employees.

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A corporation is held responsible for the acts and statements of such persons when such acts and statements are performed or made within the scope of their express or apparent authority, and this responsibility exists even though such statements or actions are in violation of law.

It is not necessary for a finding of such authority that an officer, director or employee be specifically authorized or instructed to commit the particular acts or make the particular statements. Apparent authority is the power an outsider would normally assume a person would possess judging from his position and the general scope of his known functions.

Since an essential element of the crime is a specific intent to defraud, it follows that good faith is a complete defense to the crime of mail fraud.

However misleading or deceptive a plan may be, the use of the mails in connection with such a scheme does not constitute a crime if the plan was devised in good faith.

However, there is no burden on the defendant to prove good faith. Rather, the burden is on the government to prove fraudulent intent and by that token to prove bad faith on the part of the defendant beyond a reasonable doubt.

The defendants have offered testimony of good faith to negative the proof offered by the government to satisfy its burden on this element.

In other words, you consider all the testimony and from that testimony determine whether the government has sustained its burden of proof.

No amount of honest belief on the part of a defendant that the enterprise will ultimately succeed and that no one would suffer any loss excuses fraudulent actions.

Finally, we consider the third element, the use of the mails in furtherance of the scheme to defraud.

The use of the mails must involve the sending of items from or into the Southern District of New York.

I charge you as a matter of law that the Southern District of New York includes Manhattan and the Bronx.

It will occur to you that there is no proof that each defendant himself or itself actually mailed or received in the mail any of the twenty items referred to in the twenty counts which charge mail fraud.

It is sufficient to establish this element of the crime if the testimony justifies a finding that a defendant caused the mailing by others.

When one does an act with the knowledge that the use of the mails will follow in the ordinary course of business or where such use of the mails can reasonably be foreseen, then a defendant causes the mails to be used.

The mailed matter need not disclose on its face a fraudulent representation but need only be intended to further or assist in carrying out the scheme to defraud.

With respect to the use of the mails, the government must establish beyond a reasonable doubt the particular mailing charged in each count of the indictment.

The mailing in eighteen of the twenty counts is claimed to consist of eighteen purchasers sending their payments to the Chemical Bank in New York.

Count 36 involves the mailing of a letter from Rio Rancho Estates to a purchaser.

Count 41 involves the mailing of a letter from ATC Realty Corporation to a purchaser.

I am not going to detail each of the counts, but I will give you this resume of the counts so you will have it before you and know the particular transactions that you will be discussing.

You must determine whether the payments and letters referred to in the indictment were delivered by mail, and in the case of payments to the Chemical Bank, and as to Count 36 to Samuel Kaufman and as to Count 41 to Lillian Seader, and whether this was caused directly or indirectly by a defendant to further the scheme to defraud.

Now, inconnection with the charges contained in the mail fraud counts and in the Interstate Land Sales Full Disclosure Act counts which we will discuss shortly, it is not necessary for the government to prove that each defendant personally did each of the acts constituting the essential elements of the crime.

The guilt of a defendant may be established without proof that he himself actually did ever act constituting the offense. This is so because anyone who knowingly aids, abets, counsels, induces or procures the commission of a crime against the United States is punishable as a principal.

In order for a defendant to aid or abet another to commit a crime, it is necessary that he wilfully associate himself in some way with the criminal venture knowing the essential elements of the offense as I have outlined it for you, that he wilfully participate in it as something that he wishes to bring about, that he wilfully seek by some action of his to make it succeed.

Mere presence and guilty knowledge on the part of a defendant that a crime is being committed is not sufficient unless you are also convinced beyond a reasonable doubt that the defendant was doing something to forward the crime, that he was a participant rather than merely a knowing spectator.

You have listened very attentively to the testimony during the course of the trial. Counsel for defendants and the government have spent the last three days in presenting their version of the testimony and the inferences they ask you to draw from that testimony.

I will only treat all those contentions in broad terms as they apply to the mail fraud counts and the Interestate Land Sales Full Disclosure counts which I will describe for you in a moment.

Obviously I cannot review all of the evidence in this case, and my failure to mention any particular fact or set of facts does not mean that it is not to be considered by you in determining the guilt or innocence of each of the defendants.

If any reference by me to matters of evidence does not coincide with your recollection of the evidence, it is your recollection and not mine that is to control.

The government contends that the proof shows that defendants made false and misleading statements and created an overall false impression which was generally misleading to persons of average prudence concerning the investment value of Rio Rancho.

The government contends that this land was sold to purchasers primarily as a safe and secure investment. As evidence of this purpose, the government points to the sales scripts used by the managers at dinners.

The government contends the defendants made fraudulent representations to purchasers that the entire property would be developed with utilities, water, et cetera, which would have provided a basis for appreciation in values of the property.

It is claimed that these representations were false in view of the testimony that only five percent of purchasers would be expected to build on their property and that utilities only existed in company owned exchange areas.

It is not the government's contention that it was financially impossible for the defendants to honor their contractual obligations regarding utilities, the government contends that the defendants did not intend to honor those obligations.

The government urges that the evidence also shows that there was no resale market for the land, which is an indicia of a good investment, and that in view of the availability of lands in and closer to Albuquerque there was no reason to believe there would be a resale market in the future.

The government points to the testimony of representations as to the setting up of a resale office when the first 55,000 acres were sold out as being false in light of the purchase of the additional 37,000 acres which postponed indefinitely the opening of a resale office.

The government argues that the proof shows that defendants made fraudulent representations that Albuquerque was bursting at the seams and the only way it could grow was to the northwest to and through Rio Rancho.

To support this contention, the government relies on the films "Your Golden Future" and "West Side Story," the speaker presentations at dinners and various printed promotional brochures.

The government points to the assertions made in these materials that Albuquerque is surrounded on three sides preventing future growth in those directions. It also points to assertions that at the present time most new growth was occurring in the northwest.

The government then relies on the testimony of Pierce, Carruthers, Avellanet, Seay and Musgrove and various studies that were made of the future development of Albuquerque to support its contention that these statements were false and that the defendants knew they were false.

Pierce testified that the Atrisco land grant was available for development certainly by 1972.

Carruthers has testified that using population density figures for the last twenty years there was sufficient land in the urban Albuquerque area omitting, Rio Rancho, to accommodate approximately 1,100,000 people.

Avellanet has testified that his 1966 report to Rio Rancho Estates advised that despite the expected doubling of the population of Albuquerque over the succeeding twenty years, there was ample undeveloped suburban land to take care of the growth without even reaching Rio Rancho Estates.

All of these witnesses testified that in their opinion it was not true that Albuquerque could only grow to the northwest.

These witnesses to whom I have referred, along with Musgrove and Seay, testified that the greatest absolute growth in the last fifteen years occurred in the northeast section of Albuquerque.

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Lastly, the government relies on a statement by AMREP in a report filed in 1962 with the Securities and Exchange Commission that AMREP does not know what growth, if any, Albuquerque would experience in the future.

Finally, along with those portions of the proof alleged to show the defendants knowingly and wilfully made false representations as part of the scheme to defraud, the government points to the testimony detailing the so-called high pressure procedures at the sales dinners and at Rio Rancho, which the government claims buttresses its contention that the defendants were engaged in a fraudulent scheme.

The defendants deny that they are guilty of any of the charges contained in this indictment. In the first place, they do argue that what was said in the films, the printed promotional material, the sales presentations at the dinners, and the reports filed with the various regulatory agencies is true. In addition, they claim that even if the statements are found to be untrue, they had an honest belief that the statements made in those materials were true. They have advanced many examples for your consideration that these contentions are correct, and they never intended to make any false representations.

They point to the fifteen years of construction and growth in the Rio Rancho developed community which are still continuing. They bring out their adherence to all state and federal agency regulations, and their complete compliance with all contract promises.

Here I want to mention that the filing of property reports and promotional literature with state and federal agencies is required by law. The acceptance by the agency of the filing and, for example, giving an NYA number for a brochure, indicates only that the defendants furnished the information required by state law. It does not indicate a view by the governmental agency as to the truth or falsity of the statements contained in such material.

The defendants point to the exchange privilege and refund privilege as evidence of their lack of intent to defraud anyone. They point to the careful and detailed instructions to salesmen to prevent any misstatements and the fact that they fired salesmen who disobeyed their orders.

Also, the defendants argue that they incurred development expenses in excess of their obligations, such as in the maintenance of common facilities. The fact that the land was sold for profit in excess of its original cost and subsequent expenses is in itself not fraudulent.

The defendants maintain that Rio Rancho lots were sold both for relocation and long-term investment and not speculation and that the long-term investment representation was without any specific indication of time. As evidence of the investment potential, they point to the growing community at Rio Rancho and the successful profits made by Reverend Schleibe, Mr. Mols and Mrs. Mellenbrook in the sale of their lots.

The defendants contend that they had reason to believe in the truth of their representations as to Albuquerque's growth to and through Rio Rancho at the time they were made and they are indeed correct. They point to Yguado's testimony concerning constraints to development on three sides of Albuquerque and the logical path of growth to the northwest. They point to the cross examination of Carruthers, Pierce and Avellanet during which numerous constraints, both geological and legal, were admitted to exist on three sides of Albuquerque.

For example, Carruthers' testimony on cross examination that a large proportion of the Atrisco grant is the subject of present title litigation and he doesn't know what the outcome will be.

Finally, the defendants point to the testimony of witnesses happy with their relocation at Rio Rancho and their investment. They attack the credibility of the government's witnesses and argue that the government witnesses are not in fact representative of purchasers who bought land at Rio Rancho.

The remaining five counts charge the defendants with violating the Interstate Land Sales Full Disclosure Act. This statute makes it a crime for a land developer or agent who sells or offers to sell any lot in the subdivision,to make use of any means of communication in interstate commerce to defraud purchasers of land. In determining whether the government has met its burden of proof under this statute and these last five counts, you may only consider evidence of conduct after May 1, 1969, since that is the date the statute took effect.

In order to find a defendant guilty under a count charging a violation of the Interstate Land Sales Full Disclosure Act, the government must establish beyond a reasonable doubt each of the following essential elements:

First. That each defendant was a developer or agent, as I will define those words for you, at the time of the acts charged in the indictment.

Second. That in selling or offering to sell lots in a subdivision, the defendant employed any device, scheme or artifice to defraud or engaged in any transaction, practice or course of business which operated or would operate as a fraud or deceit upon a purchaser.

Third. That the defendant acted wilfully and knowingly, and

Fourth. That the defendant or his agents directly or indirectly used means or instruments of communication in interstate commerce.

The first element that you must find beyond a reasonable doubt is that each defendant whose guilt or innocence you are considering was a developer or an agent of a developer. A developer is a corporation which, directly or indirectly, sells or offers to sell or advertises for sale any lots in a single subdivision divided into or proposed to be divided into fifty or more lots. An agent is any person who represents, or acts for or on behalf of, a developer in selling, or offering to sell any lot or lots in a subdivision. There is no dispute that Rio Rancho Estates is a development or subdivision containing well over fifty lots.

The second element which you must find beyond a reasonable doubt is that the defendant, in selling or offering to sell any lot, employed any device, scheme or artifice to defraud, or engaged in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser. I have already defined this for you with respect to the mail fraud charges, and the definition is the same with respect to these five counts of the indictment.

The third element you must find beyond a reasonable doubt is that the defendant acted wilfully and knowingly. This has also been defined for you with respect to the mail fraud charges and the definition is the same with respect to these counts.

Finally, you must find beyond a reasonable doubt that the defendant or its agents directly or indirectly used means or instruments of communication in interstate commerce.

Count 71 alleges that on November 22, 1974, an advertisement for Rio Rancho land was aired over WOR-TV.

Count 72 alleges that on November 18, 1974, an advertisement was aired over WPIX-TV.

Count 73, that an advertisement on November 25, 1974 was aired over WNET-TV.

Count 75 alleges that an advertisement was aired over WCBS-TV on March 25, 1975.

Count 79 alleges that an advertisement was aired on July 6, 1973 over WCBS-Radio.

The government has introduced evidence of Rio Rancho commercials which were aired on both radio and television.

I charge you as a matter of law that the television and radio advertisements, if you found that they were used, are instruments of communication in interstate commerce.

As you remember when we discussed the mailings in the mail fraud counts, it is not necessary for the government to prove that a defendant knew or directly participated in the mailings. It is sufficient if you are convinced beyond a reasonable doubt that a defendant participated in the scheme to defraud and that he could have reasonably foreseen that the mails would be used in furtherance of the scheme even if the mailing was actually done by someone entirely unconnected. The same principle applies here as to the use of instruments of communication in interstate commerce.

Of course, there is no dispute here about the actual airing of the television and radio advertisements.

Again, as I told you earlier, it is not necessary for the government to prove that each defendant personally did each of the acts constituting the essential elements of the crime of violating the Interstate Land Sales Full Disclosure Act. As I explained before, a defendant can be found guilty of violating the statute if he knowingly aids, abets, counsels, induces or procures the commission of the crime alleged in the indictment.

In determining the guilt or innocence of a defendant, you must decide that question solely from the evidence you heard from the witness stand, and the exhibits that have been placed before you.

The summations of counsel which you have heard are not to be considered as evidence, but only as arguments to you as to what counsel feel you should find from the evidence. Statements made by counsel in arguing the admissibility of proposed evidence and colloquies between the Court and counsel with respect to admission or rejection of such evidence are not evidence and are not to be considered by you in your deliberations. In determining the issues in this case, it is your recollection of the testimony that is to control and not that of counsel, or of the Court.

If, during the course of the trial, the Court sustained an objection by one counsel to a question asked by the examining counsel, you are to disregard the question and any alleged facts contained in the question, and you may not speculate as to what the answer would have been.

If a question was asked and an answer given by the witness, and I have then stricken the answer from the record, you are to disregard both the question and the answer in your deliberations.

The Court's function is not only to preside at the trial, but to assure it is tried within the framework of the Rules of Evidence and to clarify matters that are at issue in the trial.

At various times during the trial, so-called side bar conferences were held out of your hearing. They related to matters of law which do not concern you, and so these conferences or their purposes may not enter into your deliberations.

During the course of trial, on several occasions, I admonished counsel, both for the government and for the defense. Sometimes lawyers,in the zeal of advocacy, make statements which in calmer moments they would not and should not have made.

Now, there are, generally speaking, two types of evidence from which a jury may properly find the

the truth as to the facts of a case. One is direct evidence such as the testimony of an eyewitness. The other is indirect or circumstantial evidence which is the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts.

Circumstantial evidence is the proof of facts from which you may reasonably infer a material element of the crime.

Let us take one simple example to illustrate what is meant by circumstantial evidence. We will assume that when you entered the courthouse this morning the sum was shining brightly outside and it was a clear day. There was no rain. Now, assume that in the courtroom the blinds are drawn and the drapes are drawn, so that you cannot look outside. Assume as you are sitting in this jury box, and despite the fact that it was dry when you entered the building, someone walks in with an umbrella dripping water, followed in a short time by a person wearing a raincoat which is wet.

If you are asked whether it is raining now, you cannot say that you know it directly of your own observation. But certainly upon the combination of facts which I have stated to you, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it is raining now.

That is about all there is to circumstantial evidence. You may draw such inferences as reason and common sense lead you to draw from facts which you find to have been proven. Great care must be exercised when drawing inferences from circumstances proved in criminal cases, and mere suspicions will not warrant a conviction.

However, no greater degree of certainty is required of circumstantial evidence than is required of direct evidence. It is not on any different or lower plane than direct evidence. The law simply requires that in either case you must be convinced beyond a reasonable doubt of the guilt of a defendant.

In your search for the truth, you must use plain everyday common sense. You must not be governed by sympathy, bias or prejudice. You have seen the witnesses on the stand and observed their manner of giving testimony. How did they impress you? Did they appear to be testifying frankly, candidly and fairly?

In determining what degree of credit you should give a witness' testimony, you may consider his conduct, his manner of testiying and his interest in the outcome of the trial.

You should also consider his relationship to the government or the defendants, his bias or impartiality, and any motive he may have to testify falsely.

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It does not necessarily follow, of course, that because a person is interested in the result, he is incapable of telling a truthful version of an occurrence.

If you believe that a witness has testified falsely as to any material fact, you may disregard his testimony altogether or you may accept that part of his testimony which you believe worthy of credence.

What you accept or reject as credible evidence is for you to determine, but you may not go outside the evidence to speculate as to facts.

The quality of the testimony of particular witnesses, regardless of who calls them, rather than the quantity of witnesses,is the test to be used in arriving at your decision. There is no presumption that the witnesses for the government are more or less truthful or credible than the witnesses for a defendant.

You should consider a witness' entire testimony, his direct examination, his cross examination, and his redirect examination. You should consider the strength or weakness of his recollection in light of all the testimony and the attendant circumstances in the case.

Inconsistencies or discrepancies in the testimony of a witness,or between the testimony of different witnesses, may or may not cause you to discredit such testimony.

Two or more persons witnessing an incident or a transaction may see or hear it differently. Innocent misrecollection, like failure of recollection, is not an unusual experience. In weighing the effect of the discrepancy, consider whether it pertains to a matter of importance or to an unimportant detail,and whether the discrepancy results from innocent error or willful falsehood.

You will recall the witnesses McCorkle and Seder were asked about statements they made under oath before the grand jury and in which it is claimed they appear to be inconsistent with their statements at this trial. If a witness at trial affirms the truth of the statement made under oath before the grand jury, then you may consider the statement before the grand jury both as an affirmative proof of the facts contained in it, as well as bearing on the credibility of the witness.

Evidence that Daniel Monaco has been convicted of a crime may only be considered by you in assessing his credibility as a witness and the weight you will give to his testimony.

Similarly, the fact that Nicholas Masone was given immunity from prosecution in return for his testimony may only be considered by you in assessing his credibility as a witness and the weight you will give to his testimony.

Some question has been raised in summation by both the government and the defendants about the failure to call certain persons to testify on this trial. They include Flatou, Walsh, Sommerholder and Hollander. I point out to you that none of these witnesses is under the control of either the government or any of the defendants. Any party could have subpoenaed one or all of them to appear as witnesses. Therefore, you are free to draw whatever inference you wish as to the failure of either party to call any of these persons as witnesses, or you need not draw any inference at all if you do not wish to.

Remember, as I have already told you, that the burden of proving every material element of the crime alleged is on the government and a defendant has no burden to call any witnesses.

In this case you have heard the testimony of expert witnesses. How do you, as laymen, determine the facts from expert testimony? You are to act in exactly the same way that you would appraise and determine the credibility of an ordinary witness, as I have already outlined for you.

Ordinary witnesses are allowed to tell you only what they see, hear or experience. An expert witness is permitted to tell you his opinion by reason of his training and knowledge in his particular field.

As you well know, an opinion is something a witness forms in his own mind, based on specific facts, from which, using his judgment, training and experience, he draws certain conclusions. Of course, if you don't believe the facts which form the basis of the expert's opinion, then his opinion is valueless, but otherwise you will treat an expert's opinion as evidence which you have heard. You may accpet it or you may reject it -- in whole or in part -- and it is entirely up to you as to what you will do with it as testimony and what credibility you will give to it.

You may call for any exhibits which you desire to see in conjunction with your deliberations. You may call for a reading of any portion of the official transcript of the evidence, or any portion of this charge.

You are instructed that the question of possible punishment of a defendant in the event of conviction is no concern of the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence in the event of conviction rests exclusively upon the court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of a defendant solely upon the basis of such evidence.

I have sought to avoid any comments which might suggest that I have personal views on the evidence, or that I have any opinion as to the guilt or innocence of any of the defendants, and you are not to assume that I have any such views or opinion. This charge is given to you solely to instruct you as to the law applicable to this case.

The actions of the judge during the trial in granting or denying motions or ruling on objections by counsel, or in statements to counsel, or in attempting to clearly set forth the law in these instructions, are not to be taken by you as any indication of any determination of the issues of fact. These matters, the actions of the court, relate to procedure and law. You, the members of the jury, determine the facts.

There are twelve members of this jury, and all of you must agree upon any verdict you reach as to each defendant on any count in the indictment.

This case is obviously an important one to the defendants. It is equally important to the government. I am submitting it to you in complete confidence that you will comply with your oath as jurors and decide the case fairly and impartially, and without fear or favor.

If there are any exceptions to the charge, I will excuse the jury and take the exceptions in the courtroom.

The jury will be excused.

(Jury left the courtroom.)

THE COURT: Yes.

(Pause.)

THE COURT: Yes.

MR. ARKIN: Your Honor, I shall be characteristically brief.

First, with respect to your charge about not taking the stand, I don't recollect that your Honor said no inference may be drawn either way or not.

THE COURT: You asked me to take the second paragraph of the request out and I took it out.

MR. ARKIN: I did.

Also, with respect to the portion of your Honor's charge which stated that the charge or alleged scheme, a finding of guilty could be predicated upon a finding that there was conduct, criminal conduct, at some time between the period of 1961 or '2 and 1965 -- '75, excuse me. I would ask your Honor to charge that there must be a consistent course of conduct. Not leaving an inference that it could be one day or two days or a short period of time and that that consistent conduct should be within that statutory period.

THE COURT: Denied.

MR. ARKIN: Your Honor also charged that no amount of honest belief in the ultimate success of a project or that no one would be hurt in the future is not good faith. We would ask that the charge be that if they actually believe this, however unreasonable their belief might be, that that's not fraud.

I believe that good faith, if they have that actual belief, is substantiated or sustained.

MS. HYNES: Your Honor, there was a second half of that sentence which your Honor stated.

THE COURT: My charge is:

"No amount of honest belief on the part of a defendant that the enterprise will ultimately succeed and that no one will suffer any loss excuses fraudulent actions..."

MR. ARKIN: I am saying, if your Honor please, that if they had an actual honest belief, that is a defense.

THE COURT: I think in the context of the charge that I gave, it was proper.

MR. ARKIN: With respect to your Honor's definition of fraud, it was up towards the first part of your charge, you included among your -- excuse me, I don't want to say litany of what fraud might be -- that the gain or advantage over another is a fraud.

It seems to me, if your Honor please, that that in itself would not be a fraud and that portion of your Honor's charge is not correct.

THE COURT: In the context of the whole sentence in which those words appear, I deny your application.

MR. ARKIN: Also, if your Honor please, it does detract from your language with respect to high pressure sales.

THE COURT: I don't think so.

MR. ARKIN: Also, your Honor, with respect to the marshaling of the contentions, when your Honor came to marshaling our contentions in respect to value or worthwhileness of owning the property at Rio Rancho, your Honor pointed to Mellenbrook and Mols and another, the Pastor Schliebe transactions, and there were a number of other things which we pointed to and I think consistently throughout the trial and certainly in our summations as indications of worthwhileness.

THE COURT: Mine is only a summary. If I were to give all the contentions, I would give this jury three more days of what you and Mr. Fleming and Ms. Hynes gave them on Monday, Tuesday and Wednesday. That's always true, and usually defendants have objections to marshaling the evidence. I did the best I can. I think it is fair. I won't change it.

MR. ARKIN: All right, your Honor.

THE COURT: You and Mr. Fleming spent six and a half hours telling the jury what the contentions were. They heard you.

MR. ARKIN: It will serve no purpose then for me to reiterate those contentions?

THE COURT: No.

MR. ARKIN: I wanted to make that point in any event.

In speaking about the list of mailings, which you are going to give to the jury, that last couple of pages of the indictment, I believe you referred to those as transactions as opposed to merely mailings.

THE COURT: If I did, I misspoke, but I don't think it makes any difference.

MR. ARKIN: Also, your Honor, with respect to that portion of your charge, that line which talks about profit not itself being an indicator of a fraud, the inference is that profit, together with something else, may be an indicator of fraud.

THE COURT: With an intent to deceive, yes.

MR. ARKIN: The loss, with intent to deceive. Profit, intent, no intent cannot be an indicator of fraud.

THE COURT: No, I think I properly set it forth.

MR. ARKIN: In terms of the good faith charge, there was evidence here that attorneys were involved in advising the company and while we did not bring attorneys to the stand --

THE COURT: What attorneys were involved?

MR. ARKIN: You had Mr. Perlmutter's testimony, for example, about things going to the attorneys before it was submitted to the Department of State.

THE COURT: That isn't sufficient to put a reference in this charge. You didn't make any requests about that in your requests to charge.

MR. ARKIN: I think there is such a request, your Honor.

THE COURT: On attorneys?

MR. ARKIN: Yes, I will pull that out.

While Mr. Arisohn is looking for it, let me go on to a couple of others.

With respect to your Honor's charge, the review and submission of materials by New York State and other state agencies, let me make my exceptions in two stages.

Stage one is that I do respectfully except to your Honor's view of the law in that regard. That does not constitute any kind of approval, that is, because of the inspection and so forth.

The second stage of my exception is that I don't believe you made clear to the jury that the belief on the part of the defendants that they were being scrutinized goes to the issue of good faith, which is the point we made.

(Continued on next page.)

THE COURT: I said it. Maybe not in the language you would like me to use it, but I said it.

MR. ARKIN: Also as I understand yesterday during our colloquy, your Honor was going to charge that the affirmative representation of resale must be proven beyond a reasonable doubt by the prosecution.

THE COURT: I don't think it is necessary in view of the way I charged the jury.

MR. ARKIN: Well, then my exception is to that.

Also one last exception is that when you charged in respect to opinion and you said that opinion is not fraudulent if there is a reasonable basis for it, I would also say to your Honor that opinion is not fraudulent if there is an actual belief in some fact, whether it is wrong or not.

THE COURT: I think that is what is meant by reasonable basis for it.

MR. ARKIN: Well, it may be based on an unreasonable fact, if your Honor please.

THE COURT: I think the charge is sufficient.

MR. ARKIN: Your Honor, we, of course, submitted copious requests to your Honor and your Honor ruled upon them and I am not going to go through them one by one, but I take it that my exception is --

THE COURT: You have exceptions to all charges that were not given in the form that you requested them.

MR. ARKIN: Thank you, your Honor.

MR. FLEMING: I take it --

THE COURT: I want to point out, the reason I put in this reference to the effect of the governmental agency indication of receipt of reports is that originally I had indicated I wouldn't put it in because I thought I had set down ground rules which you followed, Mr. Arkin, and I so indicated at the end of your summation, but when Ms. Cross gets up and has a 17-page summation of which 11 go to these reports, it is clear that you are arguing to the jury by inference that everything the defendants did was approved by a governmental agency and that's what called for the charge.

MR. ARKIN: your Honor, my quarrel with that portion of your Honor's charge, aside from the original predicate which we made a motion on months and month ago -- your Honor has ruled it out, I am not going to argue with you -- is this:

It seems to me that what we showed during the course of the trial is the consistent submission of material to the New York Department of State and other states raised a reasonable inference that these people believed that what they were doing was lawful.

THE COURT: You got that charge, but I wouldn't take Ms. Cross' 11 pages out of 17 in which she is telling this jury, in effect, that you have an NYA number, therefore, we are not guilty of fraud.

That is the impact of those 11 pages.

Read them .

I clearly said at the end of your summation you were within the framework of the rule, and as soon as I said that Ms. Cross gets up and gives a ten-minute dissertation on how these rules are and that everything is hunkey-dorey, and that is not true.

Yes, Mr. Fleming?

Are you finished with your exceptions?

MR. ARKIN: Well, I completed them, yes.

THE COURT: Yes, Mr. Fleming?

MR. FLEMING: Yes, your Honor.

We, of course, take our exception to your Honor's failure to charge insofar as the requested instructions.

Your Honor, we object to your Honor's instruction that guilt on one count, guilt or innocence on one count with regard to any individual defendant should not affect the judgment as to the guilt or innocence of that defendant on any other count.

It seems to me that where the crime charged is a scheme to defraud and where the separate counts are simply separate mailings allegedly pursuant to the exact scheme to defraud, then a verdict of not guilty on one count does have an effect on the guilt or innocence of the very same defendant on the next count.

THE COURT: Theoretically, the jury may not believe the mailings in the other count.

MR. FLEMING: I understand that, your Honor. But I think even your Honor would believe that that is not the thrust of what I am saying.

It concerns me in this case, which alleges a single scheme of fraud, that a finding of not guilty with regard to one count would not, in essence, include the rest.

THE COURT: I think this creates the same problem of inconsistent verdicts between the conspiracy count and the substantive count.

I think the law puts you in that box.

The objection is overruled.

MR. FLEMING: I think it is not in the same, if I may comment, your Honor, but the objection is overruled.

Your Honor, with regard to your instruction on reasonable doubt, I object to your Honor's -- if I heard correctly, your Honor did not charge the language of hesitate to act on matters of importance in your own life.

THE COURT: I did.

MR. FLEMING: You did? I'm sorry.

Then I object to your Honor's failure to charge the moral certainty language.

THE COURT: The Court of Appeals says I may not use it.

MR. FLEMING: I know that. I am objecting to that, too.

THE COURT: I hope you don't have to test it again, but if you have the opportunity, your record is made.

MR. FLEMING: Your Honor, with regard to the question of representations as to ready resale, I want to join in what Mr. Arkin has said.

I think it does require a specific instruction in the circumstances of this case for two reasons:

Your Honor charged that it was a violation of the mail fraud statute to conceal a material fact in an attempt to mislead.

I take exception to that instruction, and your Honor has overruled my exception.

Ms. Hynes --

THE COURT: Yes.

MR. FLEMING: Ms. Hynes argued that these defendants should have told the purchasers that there was no resale market.

If you put your Honor's instruction of the concealment of a material fact as an attempt to mislead with Ms. Hynes' consistent broken record representation yesterday that these people should have been told there was no resale market, it seems to me we are entitled to an instruction that the prosecution is under an affirmative obligation to establish that the defendants represented the existence of a resale market and that the mere failure to disclose the non-existence of a resale market does not constitute a material misrepresentation.

THE COURT: Ms. Hynes?

MS. HYNES: Your Honor, I think this argument has come up time and time again.

The government's position is that given the thrust of the material that was submitted and given to these people and the statement that were made, the whole thrust of that was that they would be in a position to resell it and that your Honor has charged the jury that they have to take into consideration all of the statements that were made to them and what a reasonable person would believe based upon it, and that's really the issue that we are dealing with in this case.

Our contention is that people were led to believe that they could resell it and --

THE COURT: Mr. Fleming says you also argued to this jury that there was an obligation on the defendants to tell the purchasers that there was no resale market. That is his point.

MR. FLEMING: You argued that yesterday.

MS. HYNES: Your Honor, the argument that I think that Mr. Fleming is referring to is an argument that I made in rebuttal when Mr. Fleming said in his summation what did we want these defendants to do, and I responded that we wanted them to tell the truth when they were portraying this as a good investment when they knew there was no resale market for it and no likelihood of resale market.

I think your Honor stated that in your charge in terms of what the contentions were.

THE COURT: What are you referring to in the record, Mr. Fleming?

MR. FLEMING: Ms. Hynes' summation.

THE COURT: Her rebuttal?

MR. FLEMING: I will refer your Honor to --

yesterday, your Honor, I recall it quite specifically, I believe -- Mr. Sprizzo is looking for it.

We argued it after her summation. Mr. Sprizzo is finding the portions of Ms. Hynes' rebuttal summation.

Mr. Arkin asked if the court was going to instruct the jury there was no duty on the part of the defendants to advise any of the purchasers of the absence of a resale market or the non-existence of a moderate resale market on page 7790.

The court said it would charge that the government had to prove an affirmative representation that there would be a resale market.

THE COURT: I said -- the quote is:

"THE COURT: No. That is not involved in the claim that is made here.

"They claim the affirmative representation was that there would be a resale market, and that is what the jury would have to find."

MR. FLEMING: I am sorry, your Honor?

THE COURT: "And that is what the jury would have to find."

I didn't say that the government was claiming that they should have told the defendants there was no resale market.

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MR. FLEMING: Did your Honor in your Honor's instructions say that the prosecution would have to prove that the defendants had represented there would be a resale market?

THE COURT: I didn't make any charge. That is a subsidiary issue, Mr. Fleming.

MR. FLEMING: I think without either that, your Honor, or an instruction with regard to no duty to disclose the absence of a resale market, the combination of the summation here -- here is a part of it on 7759:

"If you were buying this land on the representation that it was the only"-- the wrong one.

"If you were buying land for investment, wouldn't you want to know that there had been no resale market for it, and there was not any resale market."

I think there was more.

THE COURT: I think in conjunction -- the objection is overruled.

MR. FLEMING: Your Honor, my recollection of your Honor's charge is that you said if the jury found a scheme to defraud during any period of time between 1961 and 1975, and I would request that your Honor add the word "substantial period of time."

THE COURT: I know. You used it in your

summation, but I did not take it up, Mr. Fleming. I heard you.

MR. FLEMING: I thought I was right, your Honor --

THE COURT: That is all right. I have no objection to your arguing to the jury, but it is any time, a plan. A nd in tne context and in the proof of this case, there is no indication here that because of something that was done on one day there is a basis for a conviction. There is nothing in the charge that would indicate that. In fact, I negatived it as a single misrepresentation --

MR. FLEMING: I think my problem is really directed to Ms. Hynes' use of Exhibit 314 in her summation.

THE COURT: You mean the four month and the six month?

MR. FLEMING: Yes, in 1965.

THE COURT: That is only part of the proof.

MR. FLEMING: No, I agree. But the whole argument that I have heard in this case is absence of resale. That's all I have heard.

The only time anything was said in a script about resale was in that Koniecki script which was used for four months in 1965, and I don't think as a matter of law that a jury determination, if they came out with specific findings and said, "We find these defendants guilty of a scheme to defraud based upon the four months in 1965 when they said there would be a resale market," I do not believe, in my own judgment, that could stand and, therefore, I think because of the existence of that script, because of Ms. Hynes' reliance upon representations in that script as essential to her basic argument in this case, that is absence of resale, that the word "substantially is necessary to fairly charge this case to the jury.

THE COURT: Objection overruled.

MR. FLEMING: If your Honor please, I am speaking for two individuals.

Your Honor charged a corporation is responsible for the actions of an employee acting within express or apparent authority and that specific authorization is not necessary, that apparent authority is sufficient.

I object to that as an incorrect statement of law under the criminal law.

I object to it on behalf of the individual defendants whom I represent, since I believe that they can be viewed as the corporation and, therefore, that instruction with regard to corporate responsibility which I believe is incorrect could rub off on them, and even if correct with regard to the corporation cannot be correct with regard to them individually.

THE COURT: Objection overruled.

MR. ARKIN: I join in that objection.

THE COURT: Objection overruled.

Mr. Arkin joins in.

I assume all these exceptions run to all defendants so we don't have to repeat them.

MR. ARKIN: Thank you.

MR. FLEMING: I haven't joined in the specific ones Mr. Arkin made.

Your Honor, Mr. Arkin objected to no amount of honest belief that no one would ultimately get hurt, and I take exception, too.

I object to your Honor's charge that a jury may draw any inference at all from the failure to call a witness or may draw none.

THE COURT: The Court of Appeals has sustained in that, Mr. Fleming. I don't know the case offhand, but I will give it to you.

MR. FLEMING: Thank you, your Honor.

THE COURT: Mr. Lavinsky?

MR. LAVINSKY: Your Honor, in view of the fact that we will have the benefit of the objections made and the applications made by the others, I only have three

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additional items.

First of all, in your charge I believe that you bunched the individuals and the corporation and there was no express statement that the corporation has the same rights as a living human being in relation to the presumption of innocence and the requirement of proof beyond a reasonable doubt.

THE COURT: I don't think it is necessary in view of the wording of the charge.

MR. LAVINSKY: The second point that I wanted to make was in connection with the matter of express or apparent authority.

I am concerned that there was no converse of that, which is that where an employee lacks either actual or apparent authority that the corporation is not bound.

I am not sure --

THE COURT: But I don't know of any testimony that is left in this case after my granting Mr. Fleming's motion requires that.

MR. LAVINSKY: What we are concerned about is that the jury may not be aware of that, your Honor.

THE COURT: I am sorry. I left that specifically to counsel to advise me as to what they wanted me to do in handling the striking of that testimony, and nobody has come back to me and given me an answer.

The record shows, as I pointed out, I think it was to Mr. Fleming, maybe Mr. Arkin, it is a double-edged sword and you are to discuss with government counsel how you wanted it handled.

Nobody came back to me.

What is your next point, Mr. Lavinsky?

MR. LAVINSKY: The third and final one, your Honor, is in the discussion of circumstantial evidence and people walking in and out of rain and so forth, again, there was no statement of the --

THE COURT: A corporation can't walk in and out of the rain.

MR. LAVINSKY: I realize that, your Honor. But specifically a direction that if circumstantial evidence can give rise to conflicting inferences, that it is not proper.

THE COURT: Oh, our Court of Appeals says absolutely not.

They apologize saying other circuits may have gone the other way, but they say they still adhere to that rule.

MR. LAVINSKY: Thank you, your Honor.

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THE COURT: Bring the jury back.

(Jury present)

THE COURT: Miss Saunders, Mrs. Foy, Mr. Marshall, Mr. Lugo, Mr. Graniff and Mr. Schmidt, we have extended a relationship of some two and a half, three months, and the case has now been submitted to the jury.

Fortunately or unfortunately, you cannot participate in these deliberations and you are excused with the thanks of the Court for a wonderful show of cooperation and dedication to duty.

I gather you are excused from further jury service this term.

If you will get your belongings, thank you very much.

(Six alternate jurors excused)

(A marshal was duly sworn)

THE COURT: Follow the marshal and start your deliberations. I understand lunch will be sent in.

(At 12:30 p.m., the jury retired to the jury room to deliberate upon a verdict)

THE COURT: I gather, counsel, if there are any requests for a specific exhibit you can agree among yourselves as to what goes in.

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MR. ARKIN: We will have somebody here at all time.

MR. FLEMING: Does your Honor intend to sequester the jury?

THE COURT: No, I do not, at least not tonight nor tomorrow night.

MR. FLEMING: What time?

THE COURT: I will go to about 6:00 o'clock or so.

MR. ARKIN: Will your Honor sit over the weekend?

THE COURT: I can't tell now, but I certainly would sit on Saturday. I am not sure about Sunday, but I will let you know tomorrow if they are still around, if that is what you mean.

MR. ARKIN: I am not asking your Honor if they will still be around because I know your Honor couldn't answer that question, but I take it that we will be sitting tonight, you say, until 6:00 o'clock?

THE COURT: We will sit every night until 6:00 o'clock, roughly.

I will not sequester the jury if they have to deliberate tomorrow or Saturday, but the day after creates a problem.

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AFTERNOON SESSION

(In open court in the absence of the jury.)

(At 2:45 p.m., a note was received from the jury.)

THE COURT: We received a note from the jury, which is quite succinct.

It reads: "Tapes and movies."

I gather that the four movies that are in evidence were shown to the jury. They are the original version of "The West Side Story," the edited version of "The West Side Story," "Your Golden Future," and "New World."

MR. ARKIN: One of them was not shown, your Honor. Was the edited version shown?

MS. HYNES: Yes.

MR. ARKIN: Okay.

THE COURT: The jury has heard tapes Exhibit 669, the Side Hollander training session; Exhibit 671, the dinner party presentation of BTG Realty in Buffalo.

The jury has not heard four tapes that are in evidence, a dinner presentation in Seattle, Exhibit 673; another dinner presentation in Seattle, Exhibit 674; a dinner presentation in Denver, Exhibit 668; and half of a dinner presentation in Chicago, Exhibit 667.

I would doubt that the jury would want to hear the tapes that they haven't heard. I am perfectly willing to show them the four movies plus the tapes, Exhibits 669 and 671, all of which would have to be done in the courtroom.

Do you wish me to ask the jury regarding the movies which have the following movies they want to see, to see if they want to cut down. Otherwise they will be sitting here for hours watching movies and listening to tapes.

MR. FLEMING: It is all right with us, your Honor.

MR. ARKIN: Sure, your Honor.

MS. HYNES: It's find with the government, your Honor.

THE COURT: I will write on the bottom: "Which of the following movies do you wish to see," and then list the four of them.

MR. FLEMING: I would prefer if you say, "Do you wish to see all or any of the following movies?"

THE COURT: My experience with jurors is you are going to create a hassle in there as to what you are talking about.

MR. ARKIN: May I make one suggestion, your Honor, rather than use the word edited version of "West

Side Story," perhaps some other word your Honor might think of like shorter version.

MR. FLEMING: The dinner version.

THE COURT: There is only one that the purchasers saw, which is the shorter version.

MR. ARKIN: There is no evidence on that and we are not sure of that. They might have seen either.

THE COURT: You think people saw the original version?

MR. ARKIN: I really don't know, your Honor.

THE COURT: All right, I am not going to --

MR. ARKIN: Your Honor, whatever you want to say is fine.

THE COURT: Do you want to say first version of "West Side Story" and second version of "West Side Story"?

MS. HYNES: Your Honor, I think the version that they saw, the "West Side Story" which was produced by the company as what was shown as the dinner parties --

THE COURT: That's the edited version.

MS. HYNES: If you say "The West Side Story" shown at dinner parties and then whatever way you want to describe the other.

MR. FLEMING: Mr. Lauer reminds me that the Koniecki script, which is the 1965 script, refers to

"The West Side Story." That was, I think, pre-editing so at least some potential purchasers saw the original.

THE COURT: Do you want them to see both? I will sit here and watch movies all afternoon.

MR. FLEMING: I would identify them as "West Side Story" one, "West Side Story" two or three.

THE COURT: They won't know one and two.

MR. ARKIN: I really think, your Honor, the best way of doing it and the fairest way, rather than edited --

THE COURT: I would rather say original version and second version.

MR. ARKIN: That's find with us, your Honor.

THE COURT: I think our discussion here proves what would have happened if we sent your proposal to the jury, Mr. Fleming.

(Pause.)

(Court Exhibit 1 marked.)

(Pause.)

THE COURT: Mr. Sprizzo, are you entitled to represent all defense counsel while I announce the answer of the jury?

MR. SPRIZZO: I don't know if I am entitled to, Judge, but I will.

THE COURT: I designate you.

The jury has returned its answer. They only want to see both versions of "West Side Story."

Both versions of "West Side Story."

MR. DEVORKIN: In which order do you want to show them, your Honor?

THE COURT: Show them the original version and then the second version.

(Pause.)

MR. FLEMING: May I inquire which film is being played first?

THE COURT: The first version. The original version and then the second version.

(Jury present.)

THE COURT: You may proceed.

(Movie shown.)

(Continued on next page.)

THE COURT: I gather you now wish to hear the tapes.

THE FOREMAN: Yes.

(Pause)

MR. KAUFMAN: We are ready with the first tape, your Honor, if everybody puts their headsets on.

THE COURT: This, I gather, is 669.

MR. KAUFMAN: This is the training session.

THE COURT: This is the tape of Mr. Hollander's training session that you asked to listen to.

(Government Exhibit 669 in evidence was played to the jury)

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MR. FLEMING: Your Honor, while the other tape is being put on, could we approach the bench?

THE COURT: Yes.

(At the side bar)

THE COURT: Yes.

MR. FLEMING: Yes, your Honor, I noticed on that tape, when Hollander was going through a hypothetical closing, that he gave people restrictive covenants and said,"Initial here".

Now, I think that can create a misimpression, which I think Ms. Hynes would agree with. This was a lecture to a Denver seller's group, as I understand it, in 1968 and my understanding is in 1968 in Colorado no property reports were not required. Unless the government contests that, I would ask your Honor to instruct the jury on that in connection with that one remark by Hollander.

He is instructing Colorado sellers about the initials.

THE COURT: HUD came in later?

MR. ARISOHN: That is correct, your Honor.

MS. HYNES: I don't know whether there was a property report required in Denver at all, but I think at this point,when the jury is simply asking for an exhibit, that instructions are inappropriate.

THE COURT: I think it is proper in view of the government's hammering away at this property report during the entire trial. It would seem, listening to Mr. Hollander, that he didn't care about property reports.

You cross examined the witnesses to a farethewell about being given property reports and, if none were required, I think the jury should be told about that.

MS. HYNES: As I say, I do not know.

THE COURT: Find out.

(Pause)

(In open court)

THE COURT: Have you decided that? Speak to Mr. Fleming, Ms. Hynes.

MR. FLEMING: Could we just have five minutes outside, your Honor?

THE COURT: Yes. We will have a short recess wile they talk.

(Recess)

MS. THOMPSON: Your Honor, the transcripts the jury is taking in are not in evidence.

THE COURT: They will read them anyhow when you play the tape.

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(Pause)

THE COURT: Have we solved that problem so I can bring the jury back?

MS. HYNES: Your Honor, we are going back to our office and check the files that we have.

MR. ARKIN: I am having the Colorado regulations brought down.

THE COURT: We can't stay here all night.

MR. ARKIN: I made a telephone call and have someone on their way down with them. I know we can't stay all night, but we are doing our best to get them for you.

MS. HYNES: This is a point that should have been made a long time ago. It may take considerable time to decide whether there was a property report required. The tape has been in evidence for two months and I think --

THE COURT: I think it is only fair to do it after the way this trial has developed with the jury involved. The jury could easily say, "They didn't ask them to initial for property reports," bang, and if there was no requirement for it, you wouldn't want a jury to convict on that assumption, would you, Ms. Hynes?

MS. HYNES: No, I am simply saying it will take time.

THE COURT: We can simply go on. They won't decide this case tonight.

MR. ARKIN: Not by 6:00 o'clock.

THE COURT: I can bring them back and have them listen to the rest in the meantime. Ms. Hynes says that is a good half hour, is that right, Ms. Hynes?

MR. ARKIN: That would be fine with us, your Honor. There is no reason to waste the time.

MS. HYNES: Probably forty-five minutes.

THE COURT: Bring them back.

(Pause)

(Jury present)

THE COURT: All right.

(Government Exhibit 671 in evidence played to the jury)

THE COURT: Hold it a minute.

Do any of you have any trouble hearing?

JUROR NO. 1: Once in a while.

JUROR NO. 2: Just the right ear.

MR. KAUFMAN: That is the only way it comes out, Judge.

THE COURT: Turn the red one up higher. Go ahead.

(Government Exhibit 671 in evidence

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continues to be played to the jury)

MR. FLEMING: Your Honor, I can't hear.

THE COURT: Try to yellow.

(Pause)

THE COURT: Can we skip that, they have heard that already.

MS. HYNES: It is only one paragraph.

(Tape continues playing)

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THE COURT: Ladies and gentlemen of the jury, it is twenty minutes to six, and I think it is time for us to adjourn for tomorrow morning.

I am not going to ask you to be sequestered overnight, I am going to allow you to go home and return tomorrow morning at 10:00 o'clock to continue your deliberations. I do that on several premises:

First, I have your promise that each and every one of you will be here by 10:00 o'clock tomorrow morning.

I gather that is not hard for you to keep in view of your past track records since November 3rd.

And the other is that I again caution you, as I have several times before, not to talk to anyone about this case and not let anyone talk to you about it.

With that we will adjourn until tomorrow morning at 10:00 o'clock.

(Jury left the courtroom)

MR. ARKIN: Your Honor, I think we have the answer which your Honor was seeking.

We had one of the corporate counsel bring down both the regulations and also, according to him, he spoke with Mr. Koske of the Colorado Real Estate Commission, whose telephone number is here. I will give that to Ms. Hynes if she wishes to verify it.

I understand from the corporate in-house counsel, the regulations do not require an offering statement, never did and do not today and in 1968, and Mr. Ko[illegible]e confirmed that today.

THE COURT: Ms. Hynes can check that out and let me know in the morning.

(Adjournment taken to January 21, 1977 at 10:00 o'clock a.m.)

end day

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al

January 21, 1977
10:00 A.M.

Trial Resumed

(At 10:00 o'clock, the jury assembled in the jury room and continued to deliberate upon a verdict)

(At 10:15 o'clock a.m., a note was received from the jury)

(At 11:00 o'clock a.m., a note was received from the jury)

(In open court - jury not present)

MS. THOMPSON: The jury is getting Exhibit 93, Exhibits 384, 388, 389, Exhibit 271, Exhibit EK, Exhibit EI, Exhibit 60, 60-A, 60-B and the 1975 mosaic Exhibit 1075-A.

We are holding out Exhibit 41 until we consult with the Judge.

MR. KAUFMAN: Have we agreed on a contract?

MR. ARISOHN: Yes, 135-A.

MS. CROSS: The jury is getting 135-A.

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(At 11:10 o'clock a.m. - in open court - jury not present)

THE COURT: The jury has requested a number of documents, some of which I gather you have sent in.

The 1985 plan. Was that sent in?

THE CLERK: Yes, your Honor.

THE COURT: The plat map of Rio Rancho, Exhibit 93, that was sent in?

MR. FLEMING: Yes.

MR. ARKIN: Yes, your Honor.

THE COURT: Then this AMA x-ray, Exhibit 41?

MR. ARKIN: No. There is a problem on that.

THE COURT: What is the problem?

MR. FLEMING: Your Honor, there is -- my understanding is when the AMA x-ray prognosis was tendered pretrial for marking it was simply the book itself.

It turns out that the exhibit contains, in a back flap, a map which was never used at the trial or displayed to the jury and we believe that really all that was properly received was what was tendered by the prosecution prior to trial on, therefore, that the map should not go in.

THE COURT: Was that 41 ruled on prior to trial?

MR. FLEMING: Was it ruled on prior to trial?

MS. HYNES: No, your Honor.

THE COURT: You mean, this was something that was exhibited to you by the government and you had no objection to the one she showed you?

MR. FLEMING: It was -- it is my understanding, that it was tendered to us pretrial as the document. The map was not tendered pretrial and then the map was never used in the trial.

THE COURT: What is your objection, Ms. Hynes?

MR. KAUFMAN: Your Honor, pretrial the government did not have the original AMA x-ray report, we had a xerox copy which did not include the map in the back pocket.

When Mr. Carruthers arrived here to testify he brought the original with him and at that time we offered the full report, which included the back pocket and the map.

THE COURT: Did you point out to the defendants you were giving him something that you did not originally show them?

MR. KAUFMAN: I am not sure we ever focused on the fact that this map was or was not included in the pretrial offering, your Honor, but I ought to point out that when Exhibit 41 was offered, Mr. Carruthers identified it.

He said this is the AMA x-ray and prognosis report which included the 1980 land use plan."

The 1980 land use plan is the map in the back pocket. The caption of the map is the land use map for 1980.

THE COURT: Was it referred to by the witness?

MR. KAUFMAN: He referred to it in saying that the report --

THE COURT: No. I know that. That is not what I am asking you, is it?

Is there any testimony regarding it?

MR. KAUFMAN: No, your Honor.

THE COURT: All right. Take it out.

MR. FLEMING: Your Honor, the only other question we have is that Ms. Hynes has verified with the State of Colorado that there was no property report in 1968 required by the State of Colorado.

Our request, if your Honor please, is that we have a note here that we would request be sent to the jury in your Honor's handwriting, of course, and it reads as follows:

"In the Sid Hollander salesman talk tape, you heard Mr. Hollander instruct the salesmen to provide the restrictive covenants to a customer prior to obtaining the customers initials on that portion of the contract.

"The C&A Realty sales office Mr. Hollander was speaking to is located in Denver, Colorado.

"At the time of the meeting in 1968, there were no federal property reports in existence and the State of Colorado has never had a state offering statement or property report."

THE COURT: I will give them something like that, but not to the extent that you put it.

Yes, Ms. Hynes?

MS. HYNES: Your Honor, I would suggest something much shorter, simply say to the jury that with respect to the reference of Mr. Hollander to giving a customer protective covenants, that at that time no propety reports were required in Colorado and none were given.

THE COURT: You have to put there was no federal ones, too, no HUD, either.

MS. HYNES: Yes.

THE COURT: You didn't say that.

MS. HYNES: The HUD is the property report.

THE COURT: You said in Colorado. That would limit it to the state regulations.

MS. HYNES: Okay. I am sorry, you are correct, your Honor.

No property reports --

THE COURT: Let me have what you have there, Ms. Hynes.

MS. HYNES: That no property reports were required in Colorado.

(Pause)

THE COURT: I will give them this:

Yesterday you listened to the tape of Sid Hollander's talk to the salesmen in Denver, Colorado. You heard him tell the salesmen to provide the customers with copies of the restrictive covenants and obtaining their initials to indicate the receipt of such covenants.

At the time of Mr. Hollander's talk in 1968, there were no requirements in Colorado for furnishing customers with federal or state property reports or registration statements.

MR. FLEMING: Satisfactory.

MR. ARKIN: That is acceptable, your Honor.

THE COURT: To continue, the jury asked for "This is My Land."

MR. ARKIN: They have that.

THE COURT: They asked for the promotional map of Rio Rancho with arrow pointing to Rio Rancho.

MR. ARKIN: They have that, too, your Honor.

THE COURT: They asked for Mr. Yguado's report of the west side, condensed and unedited version.

MR. ARKIN: They got both of those.

THE COURT: The 1975 mosaic of the Albuquerque area.

MR. ARKIN: It is in there.

THE COURT: And a copy of the contract or purchase agreement, anyone.

MR. ARKIN: We gave it to them.

We noted on the record which exhibit number, if your Honor please.

THE COURT: So the only thing left we have is Exhibit 41 without the map.

Do you have that?

MR. KAUFMAN: Mr. Frezzo has it.

THE COURT: Give the jury that exhibit plus that yellow sheet of paper of the instruction regarding the Hollander tape.

MS. HYNES: Should we mark the note, your Honor?

THE COURT: It is dictated into the record.

Send the marshal in and get their orders for lunch.

MR. ARKIN: Your Honor, did you sign your name to that note?

THE COURT: If you want me to sign that name, I will sign my name.

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(At 11:30 a.m., a note was received from the jury.)

(In open court in the absence of the judge and jury.)

THE CLERK: I just received another note from the jury.

They would like the form letters from Rio Rancho to purchasers in response to questions of resale prior to 1971.

(Recess.)

(In open court at 2:10 p.m.)

THE COURT: We have this note from the jury which I gather you have been informed about in which they requested form letters from Rio Rancho to purchasers in response to questions of resale prior to 1971 and I gather that Exhibits 665, 652 and 149-H have been submitted to the jury, but there is some question regarding other exhibits.

MR. FLEMING: One other exhibit, your Honor.

MS. HYNES: One other exhibit, your Honor, 129-L.

MR. FLEMING: Your Honor, I have copies of 655 and 652. They were introduced during the testimony of Mrs. James, who identified them as form letters.

MS. HYNES: No, they were not introduced during the testimony of Mrs. James.

MR. FLEMING: "I offer 655."

This is James direct by Mr. Devorkin at page 3608 of the transcript:

"I offer 655.

"We have no objection.

"THE COURT: This is the same as the one before.

"MR. DEVORKIN: Just an earlier date, your Honor."

The one before, I guess, was 652.

THE COURT: 655 came in on December 3rd, as did 652.

MR. FLEMING: Yes. We have the transcript here, your Honor.

Miss or Mrs. James identifies them as form letters. That is the transcript. Here are the two exhibits.

The third exhibit that went to the jury is of a kind and is clearly a form letter.

The exhibit -- what is the exhibit number, Ms. Hynes?

MS. HYNES: I just handed it up to the court. It is 129-L

MR. FLEMING: 129-L, in our judgment, clearly is not a form letter. It is talking about taxes on unit 10, it is talking about microfilm copies on our accounts, et cetera, and it is signed by Philip G. Cohen.

Our position is it is clearly not a form letter as is apparent as --

MS. HYNES: Your Honor, the testimony by Mr. Perlmutter was with respect to responses, to inquiries that there were certain paragraphs that people would use for various types of inquiries.

This letter obviously makes more than one inquiry, but one of the inquiries that is made is an inquiry concerning resale, and there is the paragraph responding to that inquiry signed by a vice president of Rio Rancho Estates and it is a year after the other letters are being sent out, I believe.

I don't have them in front of me.

In any event, the testimony of Mr. Perlmutter was that certain form paragraphs could be pulled off an MTS machine and used to respond to customer inquiries and this is a vice president responding to an inquiry.

THE COURT: Exhibit 652 is dated October 3, 1968.

Exhibit 655 is August 22, 1969.

This Exhibit 129-L is dated December 1, 1969.

I overrule your objection, Mr. Fleming.

There was also testimony of one of the women -- I can't place it now -- who said they constantly had form paragraphs that they used and put in.

So 129-L will go in to the jury.

XXX (Court Exhibit No. 6 marked.)

(Continued on next page.)

(At 5:20 p.m.; in open court; jury not present.)

THE COURT: The court has received a note from the jury which reads:

"We cannot reach a decision today."

We might as well call them in and let them go until tomorrow morning.

Bring the jury back.

(Jury present.)

THE COURT: I received your note, which says: "We cannot reach a decision today."

Consequently, you are excused until tomorrow morning at 10:00 with the same admonition that I gave you last night.

Don't talk to anybody, don't let anybody talk to you.

We will see you tomorrow morning at 10:00.

(The jury left the courtroom.)

THE COURT: I think it would be better if everybody would not leave the courtroom for about ten minutes to allow the jurors to get off the floor.

(Adjournment taken to February 22, 1977, at 10:00 a.m.)

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

January 22, 1977
10:45 a.m.

(Trial continued.)

(Jury assembled in the jury room to continue to deliberate upon a verdict.)

(A note was received from the jury.)

(In open court in the absence of the judge and the jury.)

THE CLERK: The message reads as follows:

"Other scripts for dinner presentations in evidence."

(Pause.)

(In open court at 11:30 a.m. in the absence of the jury.)

THE COURT: We received a note from the jury which reads, "We would like to have testimony of Mandel, Zaknich, Bondy, Perlmutter."

I assume they have an idea that since the testimony exists they would like the testimony sent in to them.

Secondly, I thought if we had to sit here listening to all four transcripts, we would spend just the day listening to it.

I am going to send in the following note to the jury:

"You have asked to have the testimony read of Mandel, Zaknich, Bondy and Perlmutter.

"Do you wish the entire testimony read of each of these witnesses or do you want only designated portions?

"If you want only designated portions, please indicate below."

MR. FLEMING: May I just have a moment, your Honor?

THE COURT: Sure.

(Pause.)

MR. ARKIN: How about sending the transcript in, your Honor?

THE COURT: I will not do that, because there are things in the transcript which they shouldn't see.

MR. ARKIN: That's correct.

THE COURT: I will never send a transcript in.

We will read to them anything they want.

MR. FLEMING: Okay.

MR. ARKIN: We had a problem on the scripts, your Honor, which they have called for, apparently.

THE COURT: What is that problem?

MR. ARKIN: With respect to at least two scripts I have a problem on.

Script one, which I believe is 316, in 316 there are large portions which have been X'd out with a large black, apparently, crayon or a magic marker at one point.

It seems to me those portions which are X'd out should be covered over in some way so that the jury does not have it before them, because it was obviously not part of the script.

THE COURT: What are you sending in to them in response to that request? Just Exhibit 316?

MR. ARKIN: No, your Honor. There are several scripts.

THE COURT: Where are the other ones?

MR. ARKIN: There is 314, 316, 315, 317, 1200-C and BG.

With respect to another one of the scripts, which is 314, appearing at the top of the first page of that script is the phrase "Steve Bondy's presentation August, 1972."

Mr. Bondy was unable to identify the handwriting on that script, and it seems to me that handwriting should be eliminated or deleted from the script.

THE COURT: Did he indicate that was not his script?

MR. ARKIN: No, sir, he did not. What he indicated was that he could not recognize the handwriting at the top of the first page.

THE COURT: What difference does it make?

MR. ARKIN: It just seems to me it shouldn't be there, that's all.

THE COURT: Did he deny that that was the script he used?

MR. ARKIN: He did not deny that that's the script.

THE COURT: All right. It will go in.

What about 316?

MR. ARKIN: May I show that to your Honor?

THE COURT: That ought to be covered over.

MR. ARKIN: Excuse me?

THE COURT: It should be covered over. It wasn't part of the script.

MR. ARKIN: Yes.

May I show it to your Honor?

THE COURT: Yes.

MR. ARKIN: Let me pick out an appropriate page for his Honor.

(Handing to the court.)

THE COURT: In the meantime, give this to the marshal.

(Handing.)

THE COURT: Yes, Ms. Hynes?

MS. HYNES: With respect to BG, your Honor --

THE COURT: No. Wait. You got me on 316.

MS. HYNES: We are checking the transcript.

THE COURT: He says those portions, I gather, weren't given.

MR. ARKIN: Your Honor, I don't know what happened to them. All I know is that they were X'd out on the script and apparently were not a part of the script.

I don't know what the facts were nor does the transcript reveal what the facts were.

THE COURT: I would assume that he came in with the crossed out portions.

But then you have portions here where things are written over or things are written in.

"You meet people just like yourselves from this area who have attended dinners in the past and," and there are two words stricken and written over, "Who? When?"

Is it the government's contention the script was used with the crossed out portions?

MR. DEVORKIN: I don't think on the basis of Mr. Mandel's testimony we can say that, your Honor.

I am looking at it right now.

The court asked him, "In what form was it used, in the original or the marked up form? You have a marked up copy in your hands.

"THE WITNESS: The way it is with the marked up changes."

THE COURT: With the marked up changes.

Then the huge crossed out parts should be blanked over.

As far as the little changes made, there is no way you can do that, Mr. Arkin, unless you redo the whole thing.

MR. ARKIN: Fine.

THE COURT: Besides, I don't think the little ones are that important.

MR. ARKIN: Fine, your Honor.

THE COURT: Do you have some paper?

MR. DEVORKIN: We could go back to the Xerox room and put a piece over that large section and Xerox that page over again so it will be out.

THE COURT: There are several pages.

MR. DEVORKIN: We can do that if your Honor wished.

MR. ARKIN: I would just as soon take Mr. Devorkin's suggestion of eliminating those particular paragraphs by Xeroxing them over.

THE COURT: Okay. There aren't many of them.

Let me see how many there are.

(Pause.)

THE COURT: There are six. That won't take you long.

All right. That takes care of 314.

Now what is the next objection?

MR. ARKIN: That was 316, was it not, your Honor?

THE COURT: 316.

MS. HYNES: Yes.

Your Honor, with respect to BG, which is a script that Mr. Lederman used and came in through Mr. Lederman as a fly-buy script used at the beginning of September of 1974, this is a script where they did not sell land but, instead, sold the idea of a tour down to the property.

We would request that with respect to BG that it go in and the jury be told that this is the fly-buy script used beginning in September of 1974.

THE COURT: I will give them just what they asked for. This is a dinner presentation and it will go in.

MR. FLEMING: Your Honor, could you read again the note you intend to send the jury regarding the transcript?

THE COURT: It is in there already.

MR. FLEMING: I was just -- well, it is in there.

THE COURT: It is in.

MR. FLEMING: Can I go get it, your Honor?

THE COURT: No. They have it.

MR. FLEMING: That would include, would it not -- my point is direct and cross examination.

I assume if they ask for testimony, your Honor will give the direct and cross examination.

THE COURT: Obviously.

MS. HYNES: Your Honor, with respect to BG --

THE COURT: "We wish the entire testimony of all above witnesses."

MR. FLEMING: That is a jury that knows what it wants.

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THE COURT: Yes.

Bring the jury back.

MS. HYNES: With respect to BG, can we at least have the date when it was used so they know when it began?

THE COURT: If there is no date on it there is no date on it. I am just going to give them what they asked for.

We need from you, just to shorten the time, a designation of the pages of the witnesses.

I gather you have the index and it will be easier to dig out the transcripts which are inside.

Does anybody have an index of the witnesses?

MR. ARISOHN: We will get that, your Honor.

MR. DEVORKIN: We will get that, your Honor.

THE COURT: You can hold those up. Somebody can go down and do that, because the jurors aren't going to be looking at those for several hours.

MR. ARKIN: Your Honor, there is one further point.

My client, Mr. Howard Friedman, is ill. He has a rather high fever, which he has had for a day and a half.

We have arranged to have him see a doctor at New York Hospital between one and two today.

I take it there is no objection to having him see a doctor today.

THE COURT: If Mr. Friedman makes the application.

MR. ARKIN: I make it on his behalf and he consents not to be present during the reading of the testimony.

THE COURT: He is here so he can say it.

DEFENDANT H. FRIEDMAN: I am able to have an appointment between one and 2:00 and I have been running a fever for a few days now, so I would like to be able to leave.

THE COURT: And you ask to be excused from being present in the courtroom if there are any proceedings during that period of time necessary for you to go to the doctor and come back?

DEFENDANT H. FRIEDMAN: Yes, sir.

THE COURT: All right.

(Pause.)

MS. HYNES: Your Honor, may I inquire if as we go through the transcript and it is being read there are some errors -- there are some mistypes and whatever -- what the procedure should be.

THE COURT: Weren't they corrected with the reporter?

THE REPORTER: No, your Honor, nobody did.

THE COURT: Have we agreed who the first witness was?

MR. FLEMING: Mandel.

THE COURT: Do you know what page Mandel started on?

MS. THOMPSON: 595 to 992.

MS. HYNES: Your Honor, if the jury wants to spend a little time with the scripts, then we can read ahead and agree on Mandel, whatever portion we can get read and get corrections made, and then have them start reading them and we will be reading ahead.

THE COURT: I don't follow you.

MS. HYNES: If the jury wants to spend sometime with the scripts before the testimony is begun to be read to them and while they are looking at the scripts --

THE COURT: There can't be that many mistakes in the transcript.

MS. HYNES: We just have to read through them first.

THE COURT: Don't you have them indicated? We are not going to start now, Ms. Hynes.

Unless you are going to give me specific indications, they are going to listen to it as it is in the book. We are not going to start reading it now to see if it is correct.

Don't you have marked up transcripts if you thought there were mistakes.

Bring the jury back and read what you have.

(At 11:45 a.m., in open court; jury present.)

THE COURT: The first testimony that will be read to you will be Mr. Mandel's testimony.

It will be read in the order in which they appeared before you.

JUROR NO. 9: Couldn't we take the testimony and read it ourselves?

THE COURT: No, you cannot, because there are things in there that you couldn't hear which took place at the side bar and we can't go through snipping out for you. That's why I asked you if you wanted to designate.

Perhaps when we get through with Mr. Mandel you will get an idea what you are looking for and may want to designate as far as the other witnesses are concerned. I will allow that. But we will have to start doing it the long way.

(Mr. Mandel's testimony was read from page 595 to 671.)

THE COURT: I think we can stop at this time for lunch. Your lunch has arrived.

(The jury left the courtroom.)

THE COURT: Yes, Ms. Hynes?

MS. HYNES: Should we send the scripts in, your Honor?

THE COURT: No. They are having their lunch.

(Luncheon recess.)

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AFTERNOON SESSION

2:00 p.m.

(In open court without the presence of the jury.)

(At 2:00 p.m., a note was received from the jury.)

"Can we get the dinner scripts before we go back into the courtroom?" Signed "Foreman."

xxxx (Court Exhibit 10 marked.)

MS. HYNES: Pursuant to the request of the jury for scripts that are in evidence, we are sending in to them Government Exhibits 314, 315, 316, 317, 1200-C and Defendant's Exhibit BG.

Previously the jury had requested form letters concerning resale prior to 1971. We sent in to the jury Government Exhibit 149-H. Deleted from 149-H, which was sent in to the jury, is the first page, which is a letter, dated April 30, 1970, to Rio Rancho Estates from Zarco Dabovich.

Also sent in to the jury in response to that request was Government Exhibit 652. The third page of 652, which is a letter on the letterhead of Rio Rancho Estates, dated December 7, 1971, addressed to Lilian Goldfine, was not included in 652, which was sent in to the jury because it was not responsive to their request and, accordingly, was deleted from 652, which was sent in to the jury.

(Recess.)

(In open court without the presence of the jury.)

(At 3:00 p.m., a note was received from the jury.)

THE COURT: The jury has sent another note in. I can only gather from the notes that have come in since lunch that they have at least temporarily dropped their request to hear the reading of the testimony.

This note now reads:

"We would like to hear or see the testimony saying that the 55,000 acres was almost sold out. Will listen to tapes now."

I don't understand that last sentence. Does anybody here understand it? They have heard all the tapes, haven't they?

MS. HYNES: There are other tapes, your Honor, that are in evidence that were not played to them during the trial.

THE COURT: I am sure they are not aware of them.

MS. HYNES: I mentioned it.

THE COURT: What tapes are you referring to?

MS. HYNES: 673 --

THE COURT: Don't give me numbers. They are meaningless to me.

MS. HYNES: Other tapes of dinner parties.

THE COURT: Yes, Mr. Arkin?

MR. ARKIN: There is testimony, your Honor, from various people that at a period of time the 55,000 acres was almost sold out. Mr. Lederman testified to that, for example.

I have no recollection, perhaps somebody here can refresh my recollection, that any of the tapes, even the ones not played, have in it anything in respect to the 55,000 acres being sold out.

THE COURT: I suppose the best thing to do is let counsel talk to one another and see what you come up with. In the meantime, I am sending back to the jury a note that I would like to know specifically what tapes they would like to hear.

MR. ARKIN: Or what testimony. The testimony we know, Judge, I guess.

THE COURT: If you know it, then get together

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with the prosecution and work out the page references and we will read it to them.

MS. HYNES: Can we have the note read again, your Honor?

THE COURT: "We would like to hear or see the testimony saying that the 55,000 acres was almost sold out."

MS. THOMPSON: What is the next line after that, your Honor?

THE COURT: That's the one I don't understand. "Will listen to tapes now."

MS. HYNES: Will listen?

THE COURT: "To tapes now."

MR. ARKIN: Is that "w-e-l-l" or "w-i-l-l," your Honor?

THE COURT: "W-i-l-l."

MR. ARKIN: It makes a great deal of difference.

THE COURT: I am going to write back to them and ask them what tapes they are referring to.

MR. FLEMING: Ask them if they are referring to tapes referring to 55,000 acres.

THE COURT: I will just ask them what tapes they are referring to. In the meantime, you and the prosecution search out the references in the transcript.

MR. ARKIN: All right.

THE COURT: For the record, I am sending in to the jury in response to Court Exhibit 11 the following note:

"Your recent note says: 'Will listen to tapes now.'

"Can you specify which tapes you are referring to?"

(Pause.)

XXX (Court Exhibit 11 marked.)

(In open court without the presence of the jury.)

THE COURT: I have an answer to the note:

"Meant testimony of Mandel."

That means they want to come back and listen to Mandel.

I suggest that we do this simultaneously while they are listening to Ed read. You don't want to do it here, Ms. Thompson.

Who are you designating, Ms. Hynes, to do this?

MS. HYNES: Your Honor, I will stay through the testimony of Mandel and the others can leave and go through testimony.

THE COURT: All right, go on outside.

(Pause.)

THE COURT: All right, bring them out.

(Jury present.)

(Mandel testimony continued being read.)

(Continued on next page.)

(Mandel's testimony read to page 877, line 5.)

THE FOREMAN: We have heard enough of this, your Honor.

THE COURT: All right.

Go to Mr. Zaknich.

MR. ARKIN: Your Honor, may we approach the side bar for just a moment?

JUROR NO. 2: May we take a break?

THE COURT: Yes, we will have a short recess.

MR. ARKIN: I am simply concerned when they say they have heard enough, that they heard no cross examination whatever.

THE COURT: They haven't asked for it.

MR. ARKIN: Well, they asked for the testimony of Mr. Mandel, and I would ask your Honor to ask them whether they would also like to hear a portion of the cross examination of Mandel. That may refresh your recollection that there is cross examination.

THE COURT: Well, I suppose you are entitled to that in view of the fact that cross examination would have gone to what he testified on direct.

MR. ARKIN: Yes, your Honor, that is the very point, it did, indeed.

THE COURT: We will wait until after the recess.

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Maybe they said they heard enough simply because they wanted a recess.

MR. ARKIN: I noticed a couple of them were fidgeting.

THE COURT: Aren't we all?

MR. ARKIN: Yes.

(Recess at 5:20 p.m.)

(At 5:25 p.m., a note was received from the jury.)

(In open court in the absence of the judge and jury.)

THE CLERK: The jurors would like to see Exhibit 931.

(Pause.)

(In open court in the absence of the jury.)

THE COURT: I want to point out to the jury that you stopped the reading of Mr. Mandel's testimony before the direct examination was completed and you did not hear any of the cross examination by the defense.

JUROR NO. 2: Well, we had asked for specific parts that we wanted to hear about them.

THE COURT: You haven't told us.

If you told me I could cull it out for you.

JUROR NO. 2: We did.

THE COURT: Is that the only thing you wanted to hear from this testimony about the 55,000 acres?

I think the jury should go back.

I told you before lunch that we would start reading Mandel word for word, but would you please consider whether you want everything read or portions.

We still have 14 more hours to go of what you have asked.

I suggest you go back into the jury room and make up your mind what you would like to hear. But otherwise, we have 14 hours of reading to do.

JUROR NO. 3: I do think --

THE COURT: No, wait. I am sorry. Don't talk.

Go back into the jury room.

I asked you specifically what you wanted to hear and I said we would try Mandel to give you an idea of what you were facing.

You have only heard part of Mandel.

(At 5:40 p.m., the jury left the courtroom and retired to continue to deliberate upon a verdict.)

THE COURT: Could it be they just wanted that one question and answer on 55,000 acres that came out?

It can't be that.

MR. ARISOHN: They said they wanted it all.

MR. ARKIN: If they did, your Honor, they were very patient.

THE COURT: I have a whole load of stuff upstairs that I have to do that hasn't even been touched yet.

MR. FLEMING: You see my office.

THE COURT: Other lawyers yelling for cases.

All right. We will wait.

(In open court in the absence of the jury.)

THE COURT: Haveyou agreed upon answering that request about 55,000 acres?

MS. HYNES: Mr. Arkin hasn't checked the record yet.

THE COURT: They got one question and answer on Mandel's direct.

MR. ARKIN: Yes.

MS. HYNES: There is also an exhibit, your Honor, which was read to them, which is 872 --

THE COURT: Let me see it.

MS. HYNES: -- without the last paragraph on the 55,000 acres.

(Handing to court.)

THE COURT: Show this to Mr. Arkin.

MR. ARKIN: May I see the note, unless your Honor wants to see it first.

MS. HYNES: See or hear.

THE COURT: "We would like to hear or see the testimony about the 55,000 acres that was sold out."

MR. ARKIN: They can ask for the transcript and have it read to them.

MS. HYNES: It was read to them.

MR. ARKIN: Not all of them.

MS. HYNES: The part that is in evidence was read to them.

(Pause.)

MR. ARKIN: This, if your Honor please, I am sure is not at all what they were asking for.

THE COURT: Why?

What was read to the jury?

MS. HYNES: The part that is in evidence, which is all but the last paragraph, your Honor, is in evidence and it was read to them.

THE COURT: When, where?

MS. HYNES: It was read to them on page 5786.

THE COURT: Whose testimony?

MS. HYNES: On 12/22.

THE COURT: Oh, no, forget it. It is not one of ours.

MR. ARKIN: Where is that note again?

THE COURT: See or hear testimony regarding 55,000 acres being sold out.

What else have you got besides this?

MR. ARKIN: Well, what there is, if your Honor please, let me see if I can recount it.

Several of the witnesses -- I believe that Lederman testified that for a period of time they were telling people they were almost sold out when, in fact, there was an inventory shortage, but once the additional acreage was acquired that they ceased telling people that they were almost sold out.

I believe there is other testimony consistent with that.

Among the other people who testified to that was Mr. Zaknich, I believe Mr. Bondy testified to that, at least in one or two questions, I believe Mr. -- I am not sure. I believe Mr. Monaco may have mentioned that. And I believe that Donald Potter -- Donovan Potter mentioned that.

I believe that covers it.

THE COURT: I think we ought to wait for a clarification of this, because when I said, "We asked you to specify," Juror No. 2 said, "We did specify."

I said, "What?"

And she referred to this exhibit.

If she is referring to specification just from those four people regarding that, that is one thing.

Let us see what they come back with.

MS. HYNES: Do you want a list of people who testified with respect to that?

THE COURT: No, not now, because, Ms. Hynes, it is clear from what Juror No. 2 said that they were specifying in Court Exhibit 11 what they wanted from those four people.

If that's all they want, that's all we will give to them.

We will see what they come back with them.

MR. ARKIN: Does your Honor have any inclination how long you are going to sit tonight?

THE COURT: I do.

MR. ARKIN: What I mean by that is I have no problems I can't deal with.

THE COURT: No, no.

Actually, my intention was to let them go today at 5:00 as a formal matter.

When they decide to have some testimony read back and I saw the length of time involved, I decided in my own mind we would sit until 6:00.

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MR. ARKIN: You are not going to sit tomorrow?

THE COURT: No, I am not going to sit tomorrow. But I am going to tell them they better think things in with them, we are going to have a night session Monday.

MR. FLEMING: Can we start this reading, then, Monday, your Honor?

THE COURT: Whatever they want.

Let us see what they want.

(At 5:55 p.m., a note was received from the jury.)

(In open court in the absence of the jury.)

THE COURT: For the record, Court Exhibit 13:

"Your Honor, we want all the testimony that witnesses said they had heard salesmen say, 'We are almost sold out of the 55,000 acres and a resale office would be opened.'"

That's all they say they want.

I am going to write back: "Is this all you want read back to you?"

MS. THOMPSON: Your Honor, we may have a problem with that, because the jury is unaware that a substantial portion of that testimony was stricken.

THE COURT: Whatever is stricken -- we only read what is in the record.

"Is this all the testimony you want read? Does that satisfy the original request?"

Let us find out what they are doing.

MR. ARKIN: May I ask what your Honor has written back?

THE COURT: I thought I read it.

Read it out loud into the record.

THE CLERK: Yes, your Honor.

"Is this all the testimony you want read?

"Does this satisfy the original request for the testimony of Mandel, Zaknich, Bondy and Perlmutter?"

THE COURT: I want to see if they are giving up the original request or not.

MS. HYNES: Can we have the original note read back?

THE COURT: The original note is: "We want all the testimony that witnesses said they heard salesmen say, 'We are almost sold out of the 55,000 acres and a resale office would be opening.'"

I am sending back a note written on that:

"Is this all the testimony you want read?

"Does this satisfy the original request for the testimony of Mandel, Zaknich, Bondy and Perlmutter?"

I think we ought to find out from them whether they are still going to want the rest of it or is this going to be all they want.

MR. ARKIN: Yes.

THE COURT: All right.

I will let them go if we adhere to that and over tomorrow you can work out all the testimony you can find in this record that satisfies the quotes.

Go ahead, bring that in.

(Pause.)

MS. HYNES: Your Honor, the point I was trying to raise is the note as you read it to us specifically mentioned 55,000 acres.

There is testimony in the record that people were told the property was almost sold out and they would set up a resale office, but it doesn't have the specific reference to the 55,000 acres was going to be sold out but that the property was going to be sold out.

That was the point that I wanted clarified i it wasn't in haec verba with the quote that the note came in.

THE COURT: That I don't think we have to decide now. I want to decide where I am going to this jury and hopefully to direct them or clarify for them what they are realling looking for.

As far as answering the question is concerned, you have all day tomorrow to cull it out and we will come in here Monday, if there is any dispute, we will iron them out and give it to the jury.

You take everything you think ought to answer the question, the defendants will take everything they think will answer the question and you will sit down and you will work it out.

Mr. Fleming says there is nothing in the record to answer the question.

MR. FLEMING: Nothing, I don't think.

THE COURT: But I want to know or make sure that they have this refinement of their original request taken care of.

(Pause.)

(At 6:05 p.m., a note was received from the jury.)

THE COURT: In answer to the question: "Is this all the testimony you want read?"

Answer: "Yes."

"Does this satisfy the original request for the testimony of Mandel, Zaknich, Bondy and Perlmutter?

"Yes, unless the above is in their testimony."

MS. HYNES: That's right. They want the customers and if it is in the others.

THE COURT: They want just the testimony on this point.

I am going to call them in, tell them to go home and tell them to be ready to sit Monday night and let's see what develops.

MR. FLEMING: I should think we should cull tomorrow the testimony of customers and those witnesses.

I am not saying what will happen, I am saying that both parties should cull --

THE COURT: All the testimony on that issue and then you can argue with me Monday morning as to what should go before the jury.

MR. FLEMING: Exactly.

THE COURT: Bring the jury back.

(At 6:10 p.m.; in open court; jury present.)

THE COURT: I want to thank you for clarifying the request. It puts an entirely different picture on this.

It is ten after six and it is Saturday, so we are going to let you go home. We will give you tomorrow off. But come back Monday, but bring something with you. You may have to stay Monday night and we may have to put you up in a hotel because we don't know what is going to arise as far as you want in the future and you don't want to keep this going on as long as the trial took to take the evidence.

Counsel, over tomorrow, will go through the entire record and cull out all the information that you have asked for, which I gather is not just the four people whose testimony you asked for but any other testimony that is in the record so that it will be ready for you at 10:00 Monday morning.

Have a good weekend.

JUROR NO. 9: Anything that has to do with 55,000 acres.

THE COURT: I understand that.

JUROR NO. 4: Thank you, your Honor.

THE COURT: Good night. Have a good weekend -- or a good Sunday.

I think that is clear. They want anything to do with 55,000 acres.

Why didn't you ask that question about the 55,000 acres at the very beginning of your examination before getting to that point before they said they had enough.

MR. KAUFMAN: Your Honor, can we have the instruction that everyone remain in the courtroom until the jury leaves?

THE COURT: Yes. Please, everyone, wait in the courtroom to allow the jury time to get out.

(Adjournment taken to Monday, January 24, 1977, at 10:00 a.m.)

UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

January 24, 1977
10:00 a.m.

(Trial resumed.)

(The jury assembled in the jury room to continue to deliberate upon a verdict.)

(In open court without the presence of the jury.)

THE COURT: Good morning.

(Pause.)

THE COURT: Are you all set?

MR. ARKIN: Your Honor, may I address an application to you before we proceed to the issues of what evidence will be read.

The application is for the withdrawal of a juror and the delcaration of a mistrial on the grounds that over this weekend there appeared prominently in two local newspapers, the New York Times and the Daily News, an article based upon a report released by the United States Attorney for the Southern District of New York, Robert Fiske, in which he detailed the past year's work of the office and in which he stated that this office, the U.S. Attorney's office, had dealt --

THE COURT: I read the article.

MR. ARKIN: If your Honor please --

THE COURT: Don't tell me what the article says. You want to mark it, mark it. I have read it.

MR. ARKIN: I understand that, your Honor. It is our view that because of the timing -- we will mark both these articles -- because of the timing of these articles and because of their substance and because the jury is now out deliberating and because they must have had access to these articles that their deliberations might well have been prejudiced.

THE COURT: The only thing to do is call the jury in and ask them. I am not willing to grant a motion like that until I know that the jury has read it, number one.

MR. ARKIN: May I, if your Honor please, hand up a case which bears precisely upon that issue?

THE COURT: No. If the jury hasn't read the article, I am not going to grant your motion.

MR. ARKIN: May I make a suggestion as to how the jury be asked, then?

THE COURT: I will ask them one by one.

MR. ARKIN: Not only one by one, but may the jury be asked whether they have read any article about the U.S. Attorney's office?

THE COURT: Whether they read this article. Are both articles from the New York Times?

MR. ARKIN: And from the Daily News and on radio and TV. I will have them marked. We don't have the radio and TV clips, your Honor. We could not get those.

THE COURT: I didn't hear anything on radio and TV. You tell me when and where and I can ask them.

I read the Times article and I don't think it involves enough to grant your motion, but I will ask the jurors.

(Pause.)

THE COURT: I don't think the News article does either. Mark these.

MR. ARKIN: Your Honor, just two brief things on this and Mr. Fleming has something to say, which is to say that what bothers me about the article is its substance in connection with the 98 per cent conviction rate coupled, in addition, with the expressed frustration of the U.S. Attorneys at new laws which make it more difficult to convict sophisticated white collar criminals.

THE COURT: He is referring to getting tax returns.

MR. ARKIN: I understand, but the impression the article gives is that we convict most everybody unless you make it more difficult for us than you should and it mentions land schemes.

I must say to my knowledge there is only one land scheme case in this district -- alleged land scheme -- and that's this one. That's the only charge of land fraud that I know of. There was one previous, All American, but only one in this year, meaning 1976 and '77.

Let me just cite to your Honor, I won't hand it up, the case of U.S. versus Coast of Maine Lobster Company, Inc. That's 538 F.2d 899, which was decided in June of 1976, and which I suggest to your Honor is as close on point as it can possibly be for this kind of situation because in that case, too, there was a vacation of judgment of conviction by the First Circuit, Judge Aldridge writing, not because publicity had come out regarding the particular case there on trial, a case involving the mailing of lobsters, but because the general aura of the issues he spoke about in terms of white collar crime reflected in a general sense on the deliberations of the jury. In that case, too, the article came out on Sunday and the jury wasdeliberating on Monday.

MR. FLEMING: Your Honor, I would like to add to what Mr. Arkin says. This is the U.S. Attorney's annual report, the release of which is something which is within the control of the United States Attorney's office.

It mentions a 98 per cent successful conviction rate. Even more so, it mentions a 95 per cent successful appeal rate, which is talking about, I suppose, fair trials.

One of the articles mentions Senator Moynihan, a Democrat, recommending Mr. Fiske be retained as the U.S. Attorney.

This is not even a case brought under Mr. Fiske's jurisdiction, which makes the article even more misleading.

It talks about the quality of the lawyers who are hired to work in the United States Attorney's office in this district. Some of them come from many of the best law firms in the city or the country.

It talks about the limitation on the access to income tax returns in a case where the government is showing shareholdings and diminishment of shareholdings of these defendants and was prepared to argue information obtained from income tax returns as evidence of criminal motive. It could lead this jury to assume that such evidence would have been available except for the arbitrary laws.

It talks about sophisticated criminal activity and it talks about the inability to prosecure sophisticated businessmen, as opposed to the poor and the indigent. We have at least two Spanish-Americans on this jury who could be impacted by that statement.

It contains Mr. Fiske's photograph -- the Daily News article contains Mr. Fiske's photograph. Mr. Fiske has been in court on at least one occasion that I have observed.

THE COURT: I haven't seen him.

MR. FLEMING: He has been here.

THE COURT: I haven't seen him and I don't think the jury would know him.

MR. FLEMING: He has also been referred to as being the head of the office which brought the case even though, in fact, I think Mr. Curran was the United States Attorney then.

MR. ARKIN: He was indeed, yes.

MR. FLEMING: I say that Mr. Curran was the United States Attorney when the case was brought, but Ms. Hynes said in her opening Mr. Fiske.

My problem with questioning the jury, I think when there is an annual report in the hands of the U.S.

Attorney ready for release and this case has been on trial for as long as it has been on trial, since November 3rd, when a case either had gone to the jury or was certainly about to go to the jury, since summations began last Monday, I think it was improper to release this annual report to the newspapers at this time. I think a check of the files would show that the report of -- the annual report of the United States Attorney in this district is also reported in the New York newspapers and what is said in those annual reports is always outlined in the New York newspapers. That was certainly my experience during the nine years I was here with this office. It is the release of a document which did not have to be released. It's the release of a document which is known will attract publication and it's the release of a document at a time, I don't know the time, but either when this case was about to go to the jury or was actually in the hands of the jury.

Ordinarily these publications follow immediately upon the release, which could place the release during the time when the jury actually had the case in its hands. It contains all of the things which I have detailed, if your Honor please, which I think are substantially prejudicial.

In the Coast of Maine case they talk about sanction in the First Circuit. They said at page 902, "The timing of the prosecutor's statement is particularly critical."

They say at the same page, 902, "The rule we announce is necessarily confined to the statements of a prosecutor is supposedly associated with a particular case either because of his actual participation in it or because hers known by the jury to be an immediate supervisor of it."

They reverse essentially as a sanction against this.

THE COURT: That would mean that the U.S. Attorney could never issue an annual report in this district because there is always a jury out in this district when the report comes out.

MR. FLEMING: Not in a case of this sort, your Honor.

THE COURT: I will bet you you can take any day in the month and you will cover one of the types of cases listed in the New York Times article.

MR. FLEMING: If your Honor please, the Court of Appeals of the First Circuit takes notice of exactly that problem.

THE COURT: I would not follow the Court of Appeals of the First Circuit. I would be interested to know whether any of the members of our jury have read it.

MR. FLEMING: This is the problem I have: If you ask the jury now if they have read it or read what -- however your Honor is going to put it -- it raises all sorts of spectres.

THE COURT: It doesn't. I will merely ask them whether they read an article in the New York Times or the Daily News regarding the annual report of the United States Attorney for this district. They know whether they read that article or did not.

MR. FLEMING: Your Honor, my application, if your Honor please, is when the release of a document of this sort is made, with the timing with which it is made, this is the biggest case of the year, I just think that a per se application of the rules require it.

THE COURT: That would mean, Mr. Fleming, that the United States Attorney could never issue a report in the Southern District of New York because there would be at least one case on any day you pick that would have to be thrown out because of the issuance of the report.

MR. FLEMING: Not a case of this sort, if your Honor please.

THE COURT: What about all narcotic cases?

MR. FLEMING: Not a case of this sort in all likelihood when the jury was actually engaged in deliberations.

THE COURT: What difference does it make? I impanel a jury last Monday and charge on Wednesday and I would have to throw that indictment out in a narcotic case because that article refers to narcotics cases.

MR. FLEMING: It makes a difference to me as far as the jury deliberations because, obviously, it is a very sensitive part of the case. The alternates are gone, there is very little room for remedy and any kind of comment to the jury --

THE COURT: There won't be any room for remedy because whether there were alternates here or not, I would have to throw it out.

MR. FLEMING: Any mention of publicity at this stage to this jury it seems to me raises possibilities which cannot be foreseen.

THE COURT: I think if I ask the question, as I have indicated, I will not have raised any possibilities but will ask the jury, and I will do it one by one.

MR. FLEMING: I object.

THE COURT: What procedure do you want me to follow? You may comment on that.

MR. FLEMING: I want a mistrial.

THE COURT: That's denied.

MR. ARKIN: May we ask, if your Honor please, that in voir diring the jury one by one, as your Honor says you will do, that you limit your questioning initially to whether they read an article about Robert Fiske, the U.S. Attorney in this district, without specifying the annual report?

THE COURT: No, I will not. I will specify the annual report. Fiske may be all over the papers for all I know on something else.

MR. ARKIN: One further point, your Honor: I know, and perhaps I can be corrected, I know of no other alleged or claimed land scheme tried in this district --

THE COURT: What do I do with narcotics cases, Mr. Arkin? There may be ten on trial here right now in this court house at this very moment.

Throw them all out --

MR. ARKIN: I am not asking you to thrown them all out.

THE COURT: -- or asking my colleagues to throw them out?

MR. ARKIN: The thrust of this particular article was an attack upon the handcuffs on prosecuting white collar crime.

THE COURT: I am sorry, it goes into percentages regarding narcotics cases, Mr. Arkin. The same rule would have to apply to every type of case listed in the Times, not just land fraud cases, but every type.

MR. FLEMING: There is only one paragraph in the entire Times report on narcotics.

THE COURT: There are three words regarding this case in that report, "land fraud cases."

MR. FLEMING: That's true, but there is "wealthy businessmen as opposed to often indigent street criminals." The conviction rate --

THE COURT: That would apply to any case in our court, Mr. Fleming.

MR. FLEMING: The headline is "Fiske details attack on business crime in federal report.

"It is ironic indeed that at the same time law enforcement officials are being called upon to intensity their efforts against white collar crime" --

THE COURT: What do we do, throw all the Medicare and Medicaid cases out?

MR. FLEMING: I would.

THE COURT: If you do that, Mr. Fleming, then you take the position that the United States Attorney in the Southern District of New York may never issue a report because any day that he issues that report there will be 20 trials going on in this court house that must be thrown out. That's what you are saying, Mr. Fleming.

MR. FLEMING: I am saying, if your Honor please, when you have a major case of this length --

THE COURT: It makes no difference whether it is major or minor. If I am a defendant, it is important to me. If I am a poor man indicted and before a jury in this court or whether I am a rich man who was selling land, subdivisions, makes no difference.

MR. FLEMING: Maybe that's the proper remedy, but the case about to go to the jury or having gone to the jury after two and a half months is different. He makes a distinction between the sophisticated alleged white collar criminal and the indigent alleged criminal and now hands are tied to the conviction rate and the quality of the staff and all the rest I think is intensely prejudicial and should not have been done.

THE COURT: I say it could never have been done under your theory. There never should be a report in this district.

MR. ARKIN: If they knew they were going to release this report, perhaps they could have sequestered the three or four juries in this court house this weekend.

THE COURT: I am sure, Mr. Fleming, I will go back to annual reports in the 1960's, where the same sort of language was used --

MR. FLEMING: I can't be penalized for my wrongs or my superior's.

THE COURT: What you are saying is this is the first time it ever happened.

It happens every year in this district.

MR. FLEMING: I would have thought there would be enough sensitivity to this case, which has been going for two and a half months, certainly a major case in the office, the case is about to go to the jury or has gone to the jury, and this gets issued. Your Honor can talk about never being able to issue an annual report, I say this is very specific and this is a very specific case and the jury is deliberating and it should not have been issued at this time, and I think it is improper, and I think it requires the sanction of a mistrial.

THE COURT: Motion is denied.

I am going to inquire of the jurors one by one, unless you object to it, Mr. Fleming. You want me to do them all at the same time?

MR. ARKIN: I do not.

MR. FLEMING: If your Honor is going to inquire and not grant the mistrial, then I would prefer that your Honor inquire one by one.

THE COURT: Secondly, do you want the inquiry made here or in the robing room?

MR. ARKIN: In the robing room, your Honor.

THE COURT: All right, we will retire to the robing room.

MR. FLEMING: Could we know the question your Honor is going to ask?

THE COURT: "Have any of you read a story in the newspaper yesterday dealing with Mr. Fiske's annual report?"

MR. FLEMING: There is an implication that could be drawn from that, your Honor, and I would prefer the question be whether the jury read anything in the newspaper yesterday about the office of the United States Attorney in this district.

THE COURT: That's too broad.

MR. FLEMING: There was nothing else in the newspaper.

THE COURT: I don't know. I haven't all the newspapers in New York.

MR. ARKIN: How about a report?

THE COURT: I haven't read the papers published in Monroe, New York.

MR. ARKIN: Your Honor, you can be sure the papers in Monroe, New York, are not quite as prolific as the ones here, but perhaps if your Honor would say about "a report" of the U.S. Attorney's office. The "annual report" seems to me to have some kind of implication.

THE COURT: You don't like the word "annual."

MR. ARKIN: No, I don't.

THE COURT: "A report by" --

MR. ARKIN: Yes.

THE COURT: "The United States Attorney" and I will specify yesterday's newspapers.

MR. ARKIN: His name, Robert Fiske, yesterday's newspapers and I understand from various people, although I cannot give you chapter and verse, that it appeared on both radio and TV in the news programs.

MR. FLEMING: I wouldjust request "read or heard about it."

MR. ARKIN: Yes.

THE COURT: All right.

(In the robing room.)

MR. FLEMING: Could I just add something to our record just to reserve the right to check to see just how many juries were actually deliberating over this weekend?

THE COURT: I would think there was none actually deliberating today.

MR. FLEMING: That's exactly right.

THE COURT: I know of no others. If you want to check, you may, and put it in the record.

MR. DEVORKIN: There was a jury charged Saturday morning, which deliberated Saturday afternoon and may have reached a verdict late Saturday.

THE COURT: I heard nothing from the United States Attorney regarding the procedure we are following here. Is this all right with the United States Attorney?

MS. HYNES: Yes, your Honor. It would also be agreeable to us if your Honor wanted to voir dire the jurors without the attorneys and, then, if there was a problem, to come back and read the record to us.

THE COURT: Before you go, then, I want to tell you that I am going to put the word "annual report" in and I have to because that identifies the article that appeared.

The question is going to be: "Have you read in any newspaper yesterday or heard on TV or radio a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work by his office during that period of time?"

That's what the article was about and that identifies what he said.

MR. FLEMING: That will be the only question, your Honor?

THE COURT: Yes. Now, let me go on, supposing they said, "Yes," he read it. My next question would be: "Would your reading of that story in any way affect your ability to render an unbiased and unprejudiced verdict in this case?"

This is just to make a record to let you fellows and Ms. Hynes know what occurred because if he says, "Yes," then I think you have a serious problem. If he says, "No," I am going to let you know what was said and you make whatever motions you want to make.

MR. FLEMING: We think, your Honor, if they have read it, that's the end of the case. At least that's our view of it.

MR. ARKIN: May we ask one thing, I don't want to burden your Honor any more than you already are, I do have a Xerox of that large case which dealt with this very issue and I haveone for Ms. Hynes, also. Might I give it to your Honor's law clerk because it really bears upon this issue so cogently.

THE COURT: Yes, I will take it.

MR. ARKIN: Thank you.

Would you please get two copies and one for Ms.

Hynes.

MS. HYNES: Your Honor, if a juror responds that they have read or heard something about the annual report, can your Honor inquire what the newspaper, for example, if it is the Daily News article they read, as opposed to the New York Times or as opposed to another article in a local paper, which we do not have before us --

THE COURT: I don't think it makes much difference whether it was the Times or the Daily News, Ms. Hynes, in view of the argument made by the defendants.

If no juror read it, as far as I am concerned that's the end of the inquiry.

If a juror read it and said, "Yes," they read it and they are prejudiced now as a result of having read it, I think you have to grant the motion because I don't think I am in a position to argue with the juror on this article should not have any impact on him.

If the juror said, "Yes, I read it, but it has no impact," then I will report that back and this calls for further discussion at that point.

MR. SPRIZZO: That's a legal problem.

MR. FLEMING: Thank you, your Honor.

THE COURT: All right.

MR. KAUFMAN: In an exercise of caution, your Honor, assuming a juror has said they haven't read the article or heard anything about it, if your Honor would just instruct them not to mention anything that was said in here to the rest of the jurors.

THE COURT: I intend to tell each juror that when they go back not to tell the others what it was all about until we have interrogated the whole group.

MR. KAUFMAN: Thank you.

THE COURT: Bring my list of jurors, please.

(Attorneys left the robing room.)

THE COURT: Mr. Cuccia.

(Colloquy between the court and Juror Cuccia:)

Q Hello, Mr. Cuccia. Sit down a moment. I have to ask you a couple of questions.

A Yes.

Q I am going to ask all of your friends inside the same question, but I don't want you when you leave here to tell them what happened.

A No, sir.

Q Until I have spoken to everybody, all right?

A Yes, sir.

Q I have to put a question to you. Now listen very carefully.

A Yes.

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Q Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during this past year?

A No, sir.

THE COURT: Thank you very much.

(Juror No. 2 enters the robing room.)

Q Hello, Miss Eager, sit down and relax. I have to ask you a question and after I ask the question we are going to put you in another room because I have to ask the question of everybody.

A Okay.

Q Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during that period of time?

A No.

THE COURT: Thank you very much.

(Juror No. 3 enters the robing room.)

THE COURT: Sit in the soft seat, Mrs. Marks.

Q I have to ask you a question, Mrs. Marks, and I just want your answer to it. When you are finished we are going to ask you to go in another room because I have to

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ask this question of everybody on the jury.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during that period of time?

A No.

THE COURT: Thank you very much.

(Juror No. 4 enters the robing room.)

THE CLERK: Miss Young, have a seat.

Q How are you this morning?

A Fine, thank you, your Honor.

Q Good. Mrs. Young, I have to ask you a question.

A Yes, sir.

Q And after you have answered it we will ask you to go join Mr. Cuccia and the rest. Until I ask the question we are going to keep you apart.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during the past year?

A No, your Honor.

THE COURT: Thank you very much.

(Juror No. 5 enters the robing room.)

Q Hi-a, Mr. Weinhouse. Do you want the hard chair?

A Any chair is good.

Q Sit down. Mr. Weinhouse, I have to ask you a question.

A Yes.

Q And after you have answered it, I will ask you to join the others because we are keeping you apart while I ask these questions.

A Sure.

Q Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during the past year?

A No, I didn't.

THE COURT: Thank you very much.

THE CLERK: This way, please.

(Juror No. 6 enters the robing room.)

Q Hello. Mrs. Russo, I have to ask you a question and, after I ask it, you will join your friends outside.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the U.S. Attorney in this district, of the work of his office during the past year?

A No.

THE COURT: Thank you very much.

(Juror No. 7 enters the robing room.)

Q How are you, Mr. Ramos. Mr. Ramos, I have to ask you a question. I have asked the others and I am going to ask the rest of them.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during the past year?

A No, your Honor, I haven't. I have no TV.

THE COURT: Thank you.

(Juror No. 8 enters the robing room.)

Q Mrs. Patrick, I have to ask you a question, as I have asked the others. Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during the past year?

A No.

THE COURT: Thank you.

(Juror No. 9 enters the robing room.)

Q Mr. Haenlein, sit down. I have to ask you a question as I have asked the ones before you.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske the United States Attorney of this district of the work of his office during the past year?

A No.

THE COURT: Thank you very much.

(Juror No. 10 enters the robing room.)

Q Good morning, Mr. Tirado, how are you. Sit down.

I have to ask you a question, as I have asked the others who have been called in. It's the same question.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during the past year?

A Your Honor, I didn't.

Q You didn't hear anything?

A No.

Q You didn't read anything?

A I was sitting in my house and they surprised me, I had my birthday and they had a party for me.

THE COURT: Happy birthday. Thank you very much.

(Juror No. 11 enters the robing room.)

Q Hello, Mrs. Stefani, sit down.

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A Good morning.

Q How are you? I have to ask you a question, as I have asked all your other colleagues.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during the past year?

A No, I haven't.

THE COURT: Thank you.

THE CLERK: This way.

(Juror No. 12 enters the robing room.)

Q Good morning, Mr. O'Leary. Sit down. I have to ask you a question, as I have asked all the rest of your colleagues.

Have you read in any newspaper yesterday, or heard on TV or radio, a story concerning the annual report by Mr. Fiske, the United States Attorney in this district, of the work of his office during the past year?

A No, sir.

THE COURT: Thank you very much.

Ask the jury to go back to their jury room, please.

(All attorneys enter the robing room.)

THE COURT: The only information of note that came out of the questioning is that Mr. Tirado had a surprise birthday party yesterday and he doesn't know what went on yesterday.

Nobody read the story or heard about it on TV or radio. As far as I am concerned, that's the end of it.

MR. FLEMING: We renew our applicationfor a mistrial regardless, if your Honor please.

THE COURT: That's denied.

All right.

(In open court without the presence of the jury.)

THE COURT: Let's get back to this testimony problem.

What exhibits were the two articles?

THE CLERK: KN.

XX (Defendant's Exhibit KN marked.)

THE COURT: We now have the problem of the testimony that should be given to the jury to answer its inquiry at the end of Saturday.

Have you conferred with each other?

MS. HYNES: We have done that process, your Honor. We have the pages and the lines that we believe comply with the request.

THE COURT: What are they?

MS. HYNES: Starting off with Mr. Zaknich, for example, page 1042, line 16 to 1045, line 21.

Continuing with Mr. Zaknich, page 1104, line 23 to 1105, line 8.

Again Mr. Zaknich, 1107, line 5 to 1108, line 4.

That's all for Zaknich.

With respect to Mr. Bondy, page 1292, lines 3 to 8.

Mr. Lederman, page 1827, line 11 to page 1832, line 13.

Mr. Monaco, page 2194, lines 8 to 20.

Again Mr. Monaco, 2199, lines 9 to 22.

Page 2200, line 4.

Linda Davis, who was a tour guide, page 2820, line 14 to line 17.

Again Mrs. Davis, page 2821, line 3 to line 21 and page 2822, line 10 to line 12.

Nicholas Masone, page 1956, line 21 to page 1957, line 23.

Again Mr. Masone, page 1989, line 2 to line 19.

Mr. Donovan Potter, another company employee, page 2303, line 14 to page 2304, line 2.

Continuing with Mr. Potter, page 2304, line 25 to 2306, line 8.

Again Mr. Potter, page 2320, line 2 to line 18.

Patricia Miller, who was also a tour guide for the company, page 2858, line 3 to line 18.

Those are the company employees, your Honor, and then we have the customers.

The customers are Mrs. Greenberg, page 1627, lines 10 to 22.

Mr. Gusowsky, page 3791, line 6 to line 25.

Again Mr. Gusowsky, page 3852, lines 11 to 15.

Again Mr. Gusowsky, page 3868, line 22 to page 3870, line 7.

Mrs. Hampe, page 208, line 18 to page 209, line 9.

Mrs. Henry, page 272, lines 10 to 14.

Lines 20 to 21 and lines 24 to 25.

Again Mrs. Henry, page 273, lines 22 to 24.

Page 274 of Mrs. Henry, line 8, 274 goes down to line 8 so that would be 2 to 8.

Page 278, lines 9 to 13. Again that's Mrs. Henry.

Finally with Mrs. Henry, page 282, line 23 to page 283, line 8.

Mr. Finnen, page 1471, line 17 to page 1472, line 14.

Mr. David Jones, page 1685, lines 21 to 25.

Page 1668, lines 2 and 3.

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Again Mr. Jones, page 1674, line 14 to line 17.

Mrs. Switt, page 2746, lines 5 to 8.

Mr. Sporzynski, page 5332, line 2 to line 17 and again Mr. Sporzynski, 5417, line 5 to line 9.

Your Honor, on Mr. Jones I read on page 1674, lines 14 to 17, that should be lines 14 to 22.

Also, your Honor, at the end of the day Juror No. 9 asked for anything relating to the 55,000 acres and Exhibit 872 is an internal memorandum relating to the 55,000 acres and the acquisition of additional property and the inability of customers to resell as a result of the acquisition of additional property.

THE COURT: What is that exhibit?

MS. HYNES: 872. That's the only exhibit that we have found that comports with the note as well as the testimony to be read.

THE COURT: All right, defendants, what do you agree to?

MR. ARKIN: What we would like to do, your Honor, is to have a few moments to go through Ms. Hynes' list and we will tell your Honor --

THE COURT: I thought you had done that by now.

MR. ARKIN: We have not.

THE COURT: All right.

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MR. KAUFMAN: Your Honor, if we could -- if there are any additional matters that the defendants think ought to be read, they can read that on to the record now and we can check what they think ought to go to the jury, too.

THE COURT: Check at the same time and when I come back they can read it.

(Recess.)

(In open court without the presence of the jury.)

THE COURT: All right, what is the objection by the defendants to page 1042, line 16 to 1043, line 21?

MR. ARKIN: With respect to that particular one, it is not a declaration or representation made to a customer. In fact, with respect to all of Mr. Zaknich's testimony, it has nothing whatever to do with what purchasers heard. As I understand the note, the question is what purchasers were supposed to have been told about the additional acquisition and about a resale office. There's nothing in here about that. This has to do with Mr. Zaknich discussing with certain people the eventual acquisition of additional acreage because of a shortage of inventory. Nothing about what was told to customers, your Honor, on any one of those pages with respect to Zaknich.

THE COURT: Overruled. That means 1042, line 16 to 1043, line 21 will be read.

Page 1104, line 23 through page 1105, line 8 will be read.

Page 1107, line 5 to 1108, line 4. That takes care of Zaknich.

MS. HYNES: Yes, your Honor.

THE COURT: 1292, what is your objection?

MR. FLEMING: With regards to Zaknich's testimony that there is no allegation in the indictment that the acquisition of the additional land was a part of the fraudulent scheme.

THE COURT: Overruled.

It doesn't have to be an allegation. Supporting proof to the ultimate fact.

MR. ARKIN: With respect to page 1292, which your Honor has just addressed our attention, it is Mr. Bondy's testimony, it should be lines 3 to 12 and not merely 3 to 8, as the prosecution requests plus an additional page on cross examination, which may give it more meaning.

THE COURT: Page 1292, 3 to 8 and you say it should go further?

MR. ARKIN: 3 to 12, yes, your Honor.

THE COURT: We can't go to 12, 12 is a question.

MR. ARKIN: Excuse me, I mean 11, I am sorry, your Honor, 11.

THE COURT: What else do you want?

MR. ARKIN: Page 1359, lines 2 to 7.

THE COURT: That will come in.

MS. HYNES: Your Honor, the note doesn't refer to resale market, it refers to a resale office being set up.

THE COURT: It is the same thing.

MS. HYNES: Because there is --

THE COURT: I have ruled. It is now 12:00. I expected this to be ready at 10:00.

MS. HYNES: I did, too.

THE COURT: You made your point and you offered what you wanted and I am ruling.

This is the fourth day this jury is out.

MR. ARKIN: May we go to Lederman, your Honor?

THE COURT: That takes us up to 1827, Lederman, line 11 to page 1832, line 18.

MR. ARKIN: There again, if your Honor please, it's not a declaration to a customer. Nonetheless, if that is read, we believe that the cross examination of Mr. Lederman, which was omitted from the prosecution's requests, should also be read.

THE COURT: What page do you refer to?

MR. ARKIN: I am referring to pages 1905, line 23

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through 1907, line 12.

THE COURT: 1905 --

MR. ARKIN: Line 23, your Honor.

THE COURT: 1907, line?

MR. ARKIN: 12, your Honor.

THE COURT: Line 12. You mean to 11?
12 starts a question.

MR. ARKIN: On 1907.

THE COURT: Wait, I am sorry, I went only to 1906.

MR. ARKIN: 1907, I believe line 12 is an answer.

THE COURT: 1907, line 12, that will be read.

MS. HYNES: Your Honor, in connection with that, the statement in the property reports about resale did not appear until December of 1969 and that's not clear from the record. We believe that it should go to 1906, line 11.

THE COURT: Overruled.
Then we go to 2149.

MS. HYNES: Your Honor, can we at least have the instruction that when that report --

THE COURT: There will be no instruction.

MR. ARKIN: 2149, may I have to bound transcript, what the prosecution requests here are lines 8 to 20 and if you will look at page 2149, your Honor, it doesn't seem to have to do with anything at all --

THE COURT: I agree.

MR. KAUFMAN: Your Honor, that's a lead-in to what appears on page 2199.

THE COURT: This is Monaco speaking about Rio Rancho, right?

MR. KAUFMAN: He is testifying on page 2199 as to what was told to customers at Rio Rancho.

THE COURT: What difference does it make whether it was told at Rio Rancho or told in New York or in Cleveland, Ohio?

MR. KAUFMAN: We just tried to put it in context for the jury, that's all.

MR. ARKIN: Your Honor, here is our point: Mr. Monaco in his testimony was not hired by the company until well after the acquisition or somewhat after the acquisition of the 55,000 acres. None of his testimony could relate to the acquisition of the 37,000 acres.

He came in --

THE COURT: Wait, we have disposed of 2149, lines 8 to 20. That will be omitted.

Now we are going to 2199, line 9 to 2200, line 4.

MR. ARKIN: Yes, your Honor.

THE COURT: All right.

MR. ARKIN: Our point there is that he came to work on his own testimony, and the fact is he came to work in 1971, and the --

THE COURT: Ms. Hynes, what do you say to that?

MR. KAUFMAN: Your Honor, I think it was 1970, but, furthermore, Mr. Arkin is having the jury read Mr. Lederman's testimony about these representations not being made after 1969 and here's Monaco's testimony directly contradicting that. If Mr. Lederman's testimony about statements about resale offices being set up were not made after 1969 and you have Mr. Monaco saying that they were said in '70 and '71, we think the jury ought to get the full picture.

THE COURT: I agree.

MR. ARKIN: Your Honor, may I say one thing?

THE COURT: Yes.

MR. ARKIN: The jury has requested testimony about the acquisition. If you look at page 2165 of Monaco's testimony, he says he came to work or the fair inference, the only inference is that he came to work after --

THE COURT: You want to bring in that they were instructed not to do this after that acquisition. That's what you want read and I have said, yes, you may read that.

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They are entitled to show that Monaco claimed it wasn't true. They were still told to do it and did it. You can't have it both ways, Mr. Arkin.

MR. FLEMING: I don't think it works both ways, your Honor. The Lederman testimony deals with 1969. Ms. Hynes in her summation talked about Monaco after the acquisition.

THE COURT: Then we don't give what happened -- the change of instructions. In any event, let's interrupt. We have another jury request, which reads as follows:

"May we see thefollowing: First filing of SEC report at time of original purchase of the land."

Do you have that?

MR. DEVORKIN: Yes.

THE COURT: What is it?

This will be 15.

XXX (Court Exhibit 15 marked.)

THE COURT: Have you got it?

MS. HYNES: Your Honor, there are two SEC early filings, one is 400-A and one is 400-B and there are different pages from each of those filings.

400-A is a filing with the Commission in December of '61 and I think the only part of that that's in, and I can check, is the history of the company. That it was American Realty & Petroleum. That the company changed its name. That's page 3.

And that the property was acquired in July of 1961, which is page 11.

MS. CROSS: Your Honor, the [illegible] are parts of each of those pages in. Perhaps we could Xerox the parts of the pages that were admitted in evidence.

MS. HYNES: 400-B is the filing in April of 1962, which talks about the growth of Albuquerque; that the company is going to improve the property by putting in roads, and that --

THE COURT: Let's send in the pages that were put in evidence.

MS. CROSS: There were only parts of pages. I think we should have them Xeroxed and have the other parts blocked out.

THE COURT: Can you do it with a scissors? Look at the page and see if you can cut across.

MS. CROSS: You can, but you wouldn't have the page number.

THE COURT: Rewrite the page number on the page.

MR. ARKIN: We can do it with a scissors and we will write the page number on the top. I agree, your Honor.

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THE COURT: That takes care of that. Give them both.

MS. HYNES: Yes, your Honor.

MR. ARKIN: Ms. Cross can work with Ms. Hynes.

THE COURT: Let's do it right now. The jury is sitting there twiddling their thumbs to give them rulings on requests they made Saturday night. It is now five after twelve.

MR. ARKIN: I have a pair of scissors, yes.

Your Honor, with respect to those reports, I don't know if what is being sent in reflects the precise date of the report and so perhaps something --

THE COURT: I have no objection to writing on the top of 400-A the date of its filing and writing on top of 400-B the dateof its filing.

MR. ARKIN: In fact, your Honor would instruct us to do that.

THE COURT: Yes.

MR. ARKIN: Good, thank you.

MS. HYNES: With respect to Exhibit 400-B, that's a certified copy of the entire filing with the SEC, amendment number 3 filed on September 28, 1961 -- I am sorry, it is dated September 28, 1961 filed with the Commission on April 3, 1962, I will take the cover page that gives

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that information with the date --

THE COURT: Ms. Cross, the question reads: First filing of SEC report at time of original purchase of the land. It seems to me that's one report. This is not two.

MR. ARKIN: Yes, your Honor.

MS. CROSS: 1961.

THE COURT: What is the first one that was filed?

MS. CROSS: 1961, your Honor.

THE COURT: Send that in to them. If they are not satisfied with it, let them come back and make another request.

MS. HYNES: 400-A, which is a filing filed with the Commission on December 19, 1961.

THE COURT: Let's have what gu put in evidence of that filing.

MS. HYNES: Of that filing we put in to evidence page 3.

THE COURT: Take them out.

MS. HYNES: Which I have removed from the exhibit.

(Pause.)

MR. ARKIN: Here is our rendition.

MS. HYNES: We have it right here. Why don't you just compare it with this.

THE COURT: Do you have it?

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MS. HYNES: We have removed page 11.

THE COURT: Show it to Mr. Arkin. Don't tell it to me.

MS. HYNES: It is right here.

(Pause.)

MR. ARKIN: This is agreeable, your Honor.

THE COURT: Take it in.

Secondly they asked for property report and offering statement, but there are a number of property reports and offering statements. I think I have to ask them which one.

MS. HYNES: For what years, I guess, your Honor.

THE COURT: They say nothing. Maybe they want a sample.

Thirdly, training manual. Have you got that?

MS. HYNES: There are also several training manuals, your Honor.

MR. ARKIN: There are several exhibits out of one training manual.

MS. HYNES: No, there is a recruiting manual, an OPC manual, some exhibits out of a procedure manual. There are probably four or five different manuals in evidence.

THE COURT: Four, confidential survey.

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MR. DEVORKIN: There are two of those.

MR. ARKIN: There are two of those, your Honor.

THE COURT: Give them both.

MR. DEVORKIN: That's 256 and 347-F, your Honor.

THE COURT: Tell it to Ms. Cross.

MR. ARKIN: 258 also, Mr. Devorkin.

MS. HYNES: Mr. Arkin, on 258 the record is that Mr. Masone testified to that and this was something that was distributed to people prior to their going on a tour and information was obtained from them and that was a planning survey in respect to a tour. It was not the confidential survey. It was not called a confidential survey.

THE COURT: Mr. Arkin, wasn't confidential survey a word of art in this trial?

MR. ARKIN: For example, this particular document, 347, refers to confidential profile and this printed document refers to confidential survey, but the planned survey was a similar kind of document and I thought in an abundance of caution I would include that.

THE COURT: No, we will just send the small one in. What is the exhibit number?

MR. ARKIN: That's 256, your Honor.

THE COURT: You say there are several training manuals in evidence?

MS. HYNES: Yes,your Honor.

MR. ARKIN: They are also exhibits. We didn't put the entire manuals in. For example, we put some of it in and Ms. Hynes put some of it in so there are several exhibits and we are gathering those right now, your Honor.

THE COURT: I thought I would send them a note when we give them the answer to number one and number four, which would read as follows:

"You have asked for property reports and offering statements. There are several such reports. Can you designate which one you would like to see."

If they say, no, we want to see them all, we will send them all in.

MR. FLEMING: I would say which "one or ones."

MR. ARKIN: Yes.

THE COURT: Which ones, you want to say?

MR. ARKIN: Which one or ones.

THE COURT: You have also asked for a training manual. There are several of those in evidence and portions.

MR. ARKIN: I would say the same thing.

MR. FLEMING: There is only one training manual.

THE COURT: I gather there is more than one

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training manual.

MR. ARKIN: What happened in this case, your Honor, was that Ms. Hynes would put in a page and we would put in two other pages, subsequent pages, so there are several exhibits.

Now, there was a training manual for salesmen here and there also was I believe an OPC manual and another kind of manual. The only training manual per se, and I am sure Mr. Devorkin will correct me if I am wrong, was the one in New York and that was the only one called a training manual.

MS. HYNES: Exhibit 752-Z is an AMREP training manual. That's the title of it.

752-A is a Rio Rancho Estates OPC sales training manual. That's two of them. There are more in evidence, but these are training manuals.

THE COURT: I gather the others are only portions of a training manual.

MR. ARKIN: For example, was the entire 752 put in, Ms. Hynes?

MS. HYNES: Yes.

MR. ARKIN: We put in, for example, portions of a training manual which I raferred to in my summation, if you recall, your Honor, or you probably don't recall, CW and CV and CX.

MS. HYNES: There is also in evidence, your Honor, a manual that Mr. Zaknich produced --

THE COURT: Pardon me, Ms. Hynes. I think in view of what happened Saturday that I might add to this note:

"Can you designate what you are interested in."

In other words, they came in Saturday and asked for the full testimony of four witnesess, which would have taken 17 and a half hours to read, and it turned out that they only wanted a particular area of inquiry.

Now, the training manuals are quite large and I gather they are not interested in the whole thing. They must have something they are looking for. I think they ought to let us know what they are looking for. They are sort of a little shy of telling us that, but shyness is something that exists in jury deliberations when they are trying to find out from the record which is over 7500 pages what they are interested in.

MR. ARKIN: They didn't seem very shy on Saturday. I agree your Honor should ask them for a designation.

MS. HYNES: I agree also, your Honor.

THE COURT: I will put down:

"It might be helpful if you would designate the

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type of information you are looking for."

All right, take in the answers to one and three.

Make my note Court Exhibit 16.

XXX (Court Exhibit 16 marked.)

MR. ARKIN: Since they have not pressed on their inquiry to have further testimony read, perhaps you might ask them whether they still wish to have it read.

THE COURT: Oh, no, they asked for that specifically, that's what they wanted Saturday night when they left.

MR. ARKIN: Fine.

THE COURT: All right, let's continue then.

MR. ARKIN: We are back on the testimony, your Honor?

THE COURT: Yes.

MR. ARKIN: With respect to Mr. Monaco, your Honor has --

THE COURT: I am up to page 2199, line 9.

MR. ARKIN: 2199, line 9, I take it that your Honor has ruled that in up through line 4 on page 2200 over my contrary suggestion?

THE COURT: Right.

MR. ARKIN: If that's going to be read, may we also have read that portion of Mr. Monaco's cross which

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commences on page 2243 --

THE COURT: Line what?

MR. ARKIN: Excuse me, line 19.

I would like that road from line 19 to line 24, I guess, and then on the next page -- actually it should go straight through to 2244, line 15.

THE COURT: 2243 --

MR. ARKIN: Line 19.

THE COURT: Line 19 to?

MR. ARKIN: 2244, line 15.

THE COURT: 2244, line 15?

MR. ARKIN: Yes, your Honor.

THE COURT: I think you are entitled to that.

MR. ARKIN: Thank you.

MR. KAUFMAN: Your Honor, may we just be heard?

THE COURT: Go ahead.

MR. KAUFMAN: This note is being expanded now to include whatever customers were told or led to believe in terms of making money and over what period of time they could make money rather than what --

THE COURT: In view of all the designations you have put in, I think it is fair that this goes in.

MR. KAUFMAN: Your Honor, we specifically excluded any reference --

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THE COURT: I have read everything that you have offered. I know every word thatyou are putting in. I have read it. I think it is fair to do this. Let's go on to the next one.

MR. ARKIN: With repsect to Mr. Davis, who was a tour guide, referring to page 2820 -- I don't have that -- I now have it, your Honor, and I am sure your Honor has looked at it, it really has nothing whatever to do with the request of the jury.

THE COURT: Yes, what about it? 2820, lines 14 to 17? What happened the next morning?

MR. ARKIN: Right.

THE COURT: That's excluded. Let's go to 2821, lines 3 to 21.

"We went inside the building, we went upstairs." That's excluded.

Let's go on to 2822, line 10. Any objection to that?

MR. ARKIN: Lines 10 to 12 we have no objection to.

THE COURT: All right. 1956, line 21.

MR. ARKIN: First of all, your Honor --

MS. HYNES: In that context, you don't know who the "he" is, if we can have a stipulation that the "he" is referring to --

THE COURT: 2822?

MS. HYNES: Yes.

THE COURT: Yes, but it doesn't say. It is either Berg or Potter. He doesn't tell you, you can't tell from the previous page who said it.

MR. ARKIN: You cannot.

THE COURT: Go ahead.

MS. HYNES: It's one or the other and that's why we had the references in on that earlier testimony.

THE COURT: Go ahead.

MR. ARKIN: We are talking now about Nicholas Masone, page 1956, there Masone is talking about a period after the acquisition of the 36,000 acres and I think it is fair to say that this is not at all what the jury is calling for.

I am referring to line 21 on page 1956 to line 23 on page 57.

MS. HYNES: It's the same point on the Lederman issue, your Honor.

(Pause.)

THE COURT: In answer to my question regarding property reports and offering statements, the jury says, "They want to see any 1971."

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MR. ARKIN: Yes, your Honor.

THE COURT: Pick it out now.

MR. KAUFMAN: 1970, your Honor?

THE COURT: That's right.

MR. ARKIN: '70 or '71, if your Honor please?

THE COURT: '70. Let's have it.

MR. ARKIN: Did they say offering statement or property report?

THE COURT: The question was property report and offering statement.

MR. ARKIN: We will give them one of each.

THE COURT: My question to them was:

"There are several such reports. Can you designate which one or ones you would like to see?"

Answer: "Any 1970."

MR. ARKIN: Mr. Friedman is not feeling terribly well. May he be excused for a few minutes?

THE COURT: Yes.

MR. ARKIN: Thank you.

(Pause.)

THE COURT: All right, have you got that?

MS. HYNES: Your Honor, Government Exhibit 789 is a 1970 New York State offering statement. There is no 1970 property report in evidence. The closest is an

April 28, 1969 property report, which is 146-T in evidence.

THE COURT: Do you have an offering statement for 1970?

MS. HYNES: Yes, we do.

THE COURT: Send that in. What is it called?

MS. HYNES: It is Government Exhibit 789.

MR. ARKIN: May I ask of Ms. Hynes whether this is the only 1970 offering statement which is in evidence?

MS. HYNES: I believe it is, yes. The others are different years.

MR. ARKIN: That being the case, all right.

With respect to the HUD property reports, I believe there was also one in 1971, was there not?

MS. HYNES: Your Honor, we could answer the question by saying there is no 1970 property report in evidence. There is one in 1969 and there may be one in 1971.

THE COURT: What do you want, Mr. Arkin?

MR. ARKIN: I would rather have '71.

THE COURT: You can't have it that way.

MR. ARKIN: Excuse me, there is a '69 and there is a '71. There is no 1970 that we know about apparently.

MS. HYNES: Are you sure that there is a '71 in before you make that statement?

MR. ARKIN: I am not sure. I have the same

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recollection you do.

MS. HYNES: I am not saying that there is a '71 in. I am saying that I know there is a '69 in. Do you want to check if there's a '71? I haven't found a '71 in evidence. I found a '72 in evidence.

MR. ARKIN: Off the record.

(Discussion off the record.)

MR. ARKIN: Do you have FQ, Ms. Hynes?

(Pause.)

MR. ARKIN: There is a 1970 --

THE COURT: Do you have a training manual used about 1972?

MS. HYNES: Certainly 752-Z was used in '72 because the cover memo is dated May 16, 1972, which is 75.

THE COURT: Is that a complete training manual?

MS. HYNES: It is a complete training manual.

THE COURT: All right, any others?

MS. CROSS: 202 is also a training manual.

MS. HYNES: The testimony has been that was 73.

Your Honor, we are checking on 752-A.

THE COURT: Have we agreed on the offering statement to be sent in?

MR. ARKIN: The one that Mr. Frezzo has right now.

THE COURT: What is the exhibit number?

THE CLERK: 789.

MR. ARKIN: We are agreed on that.

THE COURT: There is a property report, however, for either '69 or '71, is that correct?

MS. HYNES: No, for 1970 we have both a property report and an offering statement?

THE COURT: Both?

MS. HYNES: Yes.

MR. ARKIN: Unfortunately it is a Xerox and an incomplete HUD report for 1970, incomplete because it does not have certain -- it doesn't have the covering page or the last page which contains the receipt and --

MS. HYNES: That's the exhibit in evidence.

MR. ARKIN: May I see the '69 one, please?

MR. KAUFMAN: Where is your Exhibit FQ?

THE COURT: The training manual is just 752-Z.

MS. HYNES: With respect to the OPC manual, the testimony is that Mr. Potter testified that it was begun to be used in 1971. There wasn't any question put to him whether it was actually used in 1972.

THE COURT: What exhibit number is that?

MS. HYNES: 752-A.

THE COURT: Is there any objection to 752-A going in?

MR. ARKIN: There's an Exhibit 202, which was also used, also a training manual.

MS. HYNES: The testimony is very clear on that, that that wasn't begun to be used until 1973 and, as a matter of fact, it was late 1973.

THE COURT: They want 1972.

MS. HYNES: Several witnesses testified to that.

(Pause.)

THE COURT: All right, what goes in? 789 and 752-Z I know there's no objection to.

What else?

MR. ARISOHN: That's not true, your Honor. With respect to 752-Z, if you take a look at it, it is not a salesman training manual, the subject of it is recruiting salesmen and it has nothing to do with training of salesmen.

MS. HYNES: The note says training manuals.

THE COURT: I know, but I interpret it as training salesmen.

MR. ARISOHN: Government Exhibit 202 is the training manual.

MS. HYNES: That's the one in lage '73. 752-A is an OPC sales training manual which trains salesmen.

MR. ARKIN: I am sure they don't recollect dates with any precision.

THE COURT: This is what they asked for.

I will exclude 752-Z because I am clear that that isn't what they want.

MR. ARISOHN: Thank you, your Honor.

THE COURT: 752-A, sales training manual. What is the objection to 752-A?

MR. ARKIN: TTe only problem with that one, that is just the OPC one for Albuquerque, and to give the jury the training manual in a complete sense I think the 202 one would be the only proper one.

THE COURT: I am sorry, Ms. Hynes says it didn't go in until late '73. It doesn't answer their question.

MR. ARKIN: Your Honor, just hear me for two sentences more.

THE COURT: Is it true that it didn't go in in late '73, Mr. Arkin?

MR. ARKIN: Your Honor, the manual was updated each year and so in substance it would have been used the year before.

THE COURT: We don't know what was added to it?

MR. ARKIN: No.

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THE COURT: The jury wants 1972, if we don't have it, we will tell them we don't have it. That's all. It is as simple as all that.

MS. CROSS: Might I inquire what the year is for 752?

MS. HYNES: I just stated that the testimony from Mr. Potter is that it was begun to be used in 1971 and he was not asked whether it was, in fact, used in 1972.

MR. ARKIN: The same objection would apply to that, then, your Honor.

THE COURT: Overruled.

MR. ARKIN: Mr. Perlmutter testified that the training manuals were changed moderately year after year.

THE COURT: I am sending in 752-A and 789, the offering statement.

What have you got on a property statement?

MS. HYNES: FQ.

MR. ARKIN: We have FQ.

THE COURT: All right, give them FQ.

MR. ARISOHN: Just so the record is complete, with respect to Government Exhibit 202, Mr. Perlmutter was asked thequestion: "When was this manual prepared to the best of your recollection?

"A Probably sometime in 1973."

I think that since the jury requested it, my recollection is that they say around 1972, Exhibit 202 which is testified as being probably sometime in '73 comes pretty close.

THE COURT: I will let in what I have sent in. You have made your record. We will adjourn for lunch.

(Luncheon recess.)

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AFTERNOON SESSION

(In the robing room - counsel present)

THE COURT: We have a request from the jury which reads as follows:

> "We would like to hear (or read) the Judge's charge to the jury before we hear testimony requested Saturday."

MR. ARISOHN: The whole charge?

THE COURT: I would like to tell them that reading the whole charge will take about fifty-five minutes and I wonder if they would like to suggest portions of it that would satisfy their request.

MR. FLEMING: I would rather if your Honor said, "The charge will take fifty-five minutes. Is that what you want?"

THE COURT: I am not going to read about how you evaluate and the usual boiler plate. I don't think that is what they want and they should be given an opportunity to indicate what they would like to hear.

MR. ARKIN: There is one aspect here, your Honor, I wish to bring up. I hope it is not again, but it is important nonetheless.

It seems to me what is being focused upon

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is the area of resale, and it seems to me that, again, if your Honor is going to read a portion of your charge or paraphrase a portion of your charge to the jury that that aspect of the case which while your Honor touched upon it it didn't seem to me to fully deal with it, to wit, that a failure to disclose the absence of a resale market, the omission, is not a crime.

It seems to me that ought to be dealt with at this point since we have the opportunity anew.

MR. FLEMING: I join in that, your Honor, again, especially in view of what I heard in Ms. Hynes' rebuttal summation which harped on the issue, "Wouldn't you like to have known there was not a resale market," or words to that effect, which I thought was a major part of her rebuttal.

THE COURT: It was just one sentence, Mr. Fleming.

MR. FLEMING: Maybe I just heard it.

MR. ARKIN: It was actually more than one sentence.

THE COURT: I have read it and the record is there and it is clear. I will not charge additionally on this. I made my ruling on it.

The fact that the jury happens to ask -- they are out four days -- to have this, they asked for a lot of other things.

If I took your position every time they asked for some testimony, I would then have to recharge them the way you would like me to recharge them on the areas in which they have shown some interest, and the answer is no, I will not do that, to which I will add that I have found out on this bench for seventeen and a half years that many times juries ask to have things read to them and it has nothing to do with their deliberations at all.

MR. ARKIN: I am sure of that, your Honor. I am also sure that your Honor, having sat for seventeen years, does not fault me for asking.

THE COURT: No. Just make your record.

MR. ARKIN: I hope I don't need that.

THE COURT: You are going to have to, because if you are going to raise it on appeal you will need it in the record.

MR. ARKIN: I am not confident there will be an appeal at all.

There is another point here, which seems to be that they are focusing on this 37,000 acre acquisition which took place sometime in 1969 or 1970.

It seems to me there might be some considerable confusion there, and let me tell your Honor why I believe that.

First, aside from the arguments made by Ms. Hynes, in the course of your Honor's charge in marshaling the evidence, your Honor marshaled the contentions and one of the contentions which your Honor marshaled on behalf of the prosecution was that the acquisition of this 37,000 acres may somehow, you know, fit into the overall framework of the claimed scheme.

It seems to me only fair that the acquisition of that 36 or 37,000 acres, in itself a business proposition, a business transaction, itself cannot infer a fraud, that is to say, there is no evidence that any representations were made and that an intention effort were made to frustrate expectations based upon represetnations which may have been made in 1968, 1969 or '70.

Accordingly, I would ask your Honor to charge the jury in addition that the acquisition of that additional acreage is not a fraud and doe snot bear upon the issue of fraud.

THE COURT: That isn't the way it was presented to them, Mr. Arkin.

It was presented to them that they were unable to carry out the representations they made concerning resale.

MR. ARKIN: Yes, but if your Honor please --

THE COURT: The objection is overruled and I refuse to so rule.

MR. FLEMING: May I request, your Honor, is the one I made this morning that you instruct the jury the acquisition of the 37,000 acres is not a fraudulent act in the indictment.

THE COURT: I will not so charge.

MR. LAVINSKY: I would like to note for the record that the corporation joins in both requests.

MR. ARKIN: Well, your Honor, may I ask one other thing?

THE COURT: Yes.

MR. ARKIN: It seems to me, if I recall what took place here was there was because of an inventory shortage in 1969 or 1970 or whatever a decision made by the corporation to acquire additional acreage, and it seems to me that the fact they acquired additional acreage in itself is not at all -- it is not evidence of, it does not bear upon, it is not a circumstance which shows any fraudulent intent.

I would ask a change of plan, if you will, that is the acquisition of the additional acreage, be charged as to evil intent or bad intent or claimed scheme.

I think the jury may very well be confused here --

THE COURT: If they are, you had plenty of time, six and a half hours, to disabuse them of that.

You are arguing to me as though I am the jury.

I will not so charge the jury. You had plent of time to sum up and you knew this was an issue in the case.

All right. Bring the jury in. I am sending this note into them.

MS. HYNES: Can we have the note, your Honor?

THE COURT: "I have your request to have my charge read. Since it will take about fifty-five minutes to read the charge, I wonder if you would like to specify any particulars of that charge that you are interested in."

All right.

MR. ARKIN: Just for my record, your Honor, one more thing, which is if at the time the claimed representations of being sold out were made and the claimed representations of having a resale office once they were sold out were made, that the defendants, or any of them, did not have the intention of acquiring the additional acreage, that is, of frustrating any expectations which might arise or be a consequence of these claimed representations, I believe your Honor should charge that that then would not be evidence of a fraud.

THE COURT: I won't charge.

MR. FLEMING: I join in that, your Honor.

MR. LAVINSKY: I join in that, your Honor.

THE COURT: All right.

MR. ARISOHN: Your Honor, we would respectfully request that you charge the jury that a statement of intent to perform an act in the future cannot form the basis of finding of fraud unless the prosecution has proved beyond a reasonable doubt that at the time the statement of intent to perform an act in the future was made that the maker of that statement or the person who authorized that statement to be made did not actually have such an intent.

MR. FLEMING: I join in that instruction.

THE COURT: You had plent of time to make requests to charge. I have ruled on them. You had six and a half hours of summation.

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I will not change it at this point.

(3:30 p.m. - in open court - jury present)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury.

You asked that the entire charge be reread to you and I will do so.

We have now reached the point in this trial where you are about to enter into your final functions as jurors, which is, of course, one of the sacred duties of citizenship.

You have given careful attention to the evidence during the entire course of the trial and I am certain you will conduct your deliberations in the same fine spirit that you have so far displayed and with impartiality and fairness reach a just verdict in this case.

In our court system, the functions of the Judge and the functions of the jury are clearly defined.

It is my duty to instruct you as to what the law is; it is your duty to accept the law as I charge it to you.

Just as I am the exclusive Judge of the law, so you are the exclusive judges of the facts. You alone determine the credibility of the witnesses and the weight, effect and value that should be given to their testimony.

It is up to you to determine from the evidence you have heard what the facts are in this case, and from those facts to decide whether a defendant has violated the law.

This is a criminal prosecution in which the government is one party and the defendants are the others.

The fact that the government is a party entitles it to no greater and to no lesser consideration than any other party. It is entitled to the same consideration as given to the defendants; no more and no less.

The case must be deicded within the scope of the charges against each defendant as contained in the indictment, but before discussing the law applicable to the charges of this indictment, let us consider some general principles which apply to every criminal case.

An indictment itself is not evidence. It merely describes the charges made against the defendant and may not be considered by you as evidence of the guilty of a defendant. Nor can the fact that a grand jury has found this indictment in any way detract from the presumption of innocence with which the law surrounds a defendant, unless and until his guilt is proved beyond a reasonable doubt.

Fifty-five of the eighty counts charged against the seven defendants still before the Court have been withdrawn from your consideration. Later on in this charge I will discuss with you in detail the twenty-five counts which remain.

As you already know, the charges against Herman Oberman, Irving Blum and Solomon Friend have likewise been withdrawn from your consideration.

These dispositions should not be considered or discussed by you, nor should they influence you in any way in passing upon the guilt or innocence of any of the defendants on the counts in the indictment which are being submitted to you for your determination.

Each of the twenty-five counts alleges the commission of a separate and distinct offense. It will be necessary for you to reach a verdict of guilty or not guilty as to each of the defendants separately on each of the twenty-five counts.

You must consider and weigh the evidence separately as to each defendant on each count.

The fact that you may find any defendant guilty or not guilty of one of the offenses charged should not control or influence your verdict with respect to any other offense of which the defendant is charged or to a charge against any other defendant.

You have noticed throughout this trial that certain defendants are represented by the same counsel. Each defendant is entitled to your separate consideration even if represented by the same counsel. The question of guilt or innocence is personal and must be decided by you as to each defendant individually.

Each defendant has denied the charges in the indictment. By the plea of not guilty, each defendant has put into issue every material fact alleged in the accusations brought against him or the corporations.

Accordingly, the government, having made the charge, has the burden of proving beyond a reasonable doubt each material element of each count of the indictment. This rule applies to each defendant individually as to each of the charges in the indictment. This burden of proof never shifts. It remains with the government during the entire trial and during your deliberations as jurors.

A defendant does not have to prove his innocence. A defendant is presumed to be innocent, and this presumption is overcome only when you reach a conclusion from the evidence that his or its guilt has been established beyond a reasonable doubt.

Now, what is meant by reasonable doubt?

There is nothing mysterious about the term. It means, as the words themselves indicate, a doubt based upon reason and common sense which arises after consideration of all the evidence.

Reasonable doubt is a doubt which would cause reasonable persons to hesitate to act in matters of importance to themselves. It is not a vague, speculative, imaginary something, and a person may not be convicted on mere suspicion or conjecture. On the other hand, a reasonable doubt does not exist merely because a juror does not wish to perform an unpleasant duty.

A reasonable doubt may arise not only from evidence produced, but also from the lack of evidence.

A defendant may also rely upon evidence brought out on cross examination of any of the witnesses who have testified on behalf of the government. He may raise a reasonable doubt in your mind as to the existence of one or more of the essential elements of the crime without affirmatively presenting his version of all or any of the evidence. This is because the law does not impose upon a defendant a duty to produce any evidence.

The defendants did not testify in their own

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behalf in this case. The law does not compel a defendant to take the witness stand and testify because the burden of proof is solely on the government.

Now, it is not necessary for the government to prove the guilt of a defendant beyond any possible doubt. Proof is usually not a matter of mathematical or absolute certainty. In the nature of things, it cannot be. But to sustaina conviction, there must be such proof as satisfies your reason as intelligent people beyond any reasonable doubt that the defendant is guilty as charged.

If you do not have a reasonable doubt of a defendant's guilt as to the material elements of a charge, then you should return a verdict of guilty on that count.

If, on the other hand, you do have a reasonable doubt as to a defendant's guilt as to any of the material elements of the crime charged, then you must return a verdict of not guilty as to that defendant on that count.

The law provides that anyone who uses the mails in furtherance of a scheme to defraud is guilty of a crime.

The law also provides that anyone who

employs a scheme to defraud in connection with the sale of subdivided lots and uses an instrument of communication in interstate commerce in offering the sale is guilty of a crime.

Briefly stated, the indictment charges that sometime between 1961 and 1975, the defendants AMREP Corporation, Rio Rancho Estates, Incorporated, and ATC Realty Corporation, acting through their officers, directors, employees and agents, devised a scheme to defraud purchasers of land at Rio Rancho Estates.

The scheme to defraud in this case is alleged to have been that the defendants made a false claim as to the investment value of the purchase of land at Rio Rancho and made a false claim as to the direction and extent of growth of Albuquerque knowing the claims to be false.

The indictment charges that the defendants Daniel Friedman, Howard Friedman, Chester Carity and Henry Hoffman were individually involved in the scheme to defraud.

Daniel Friedman was an officer of AMREP and Rio Rancho starting in 1968, and also became a director of AMREP in 1972. He was secretary of the ATC Realty Corporation for the year 1971.

Howard Friedman was at all times an officer and director of AMREP and Rio Rancho and was an officer and director of ATC Realty through 1971, at which time he continued only as a director.

Chester Carity was at all times an officer and director of AMREP and Rio Rancho, he was an officer and director of ATC Realty through 1970 and, again, in 1972 and 1973. In 1971, 1974 and 1975, he was only a director of this corporation.

Henry Hoffman was an officer and director of AMREP through 1974 and only a director in 1975. He was an officer of Rio Rancho through 1973 and a director at all times. He was a director of ATC Realty from 1965 to 1969.

AMREP Corporation was the parent corporation of both Rio Rancho and ATC Realty and owned all the stock of both of these companies.

The indictment charges that in furtherance of this scheme to defraud, each of the defendants caused specific matter to be sent through the U.S. Mail. Each mailing, although related to a single scheme to defraud, forms the basis of a separate charge.

In order to find a defendant guilty under a count charging violation of the mail fraud statute, the government must establish beyond a reasonable doubt each of the following essential elements:

One, that a scheme or artifice to defraud or to obtain money by false and fraudulent pretenses, representations or promises as alleged in the indictment was devised by the defendants, or any one of them.

Two, that the defendant knowingly and wilfully participated in the scheme or artifice to defraud with knowledge of its fraudulent nature and with intent to defraud.

And, three, that is as to each count, there occurred the use of the mails in furtherance of that scheme.

Now let us consider each element separately.

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The first element of the offense is the existence of a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretenses, representations or promises.

The language describing this first element is almost self-explanatory:

A scheme or artifice is merely a plan or a pattern for the accomplishment of an object. Proof of an isolated misrepresentation alone is not sufficient to constitute a scheme to defraud:

Fraud is a general term which embraces all the various means which human ingenuity can devise and which are resorted to by any individual to gain advantage over another by false representations, suggestions or suppression of the truth.

A pretense, representation or statement is fraudulent if it was falsely made with intent to deceive.

A statement may also be fraudulent if it conceals material facts in a manner that makes what is said deliberately misleading.

An opnion or prediction as to future events is not fraudulent if there is reasonable basis for such opinion. An opinion or prediction is fraudulent if you find there was no reasonable basis to sustain it or that

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a defendant knew that the opinion or prediction was misleading as to a material fact.

A material fact is one to which an average reasonably prudent buyer might attach importance in deciding whether or not to buy Rio Rancho land. However, mere pushing, exaggerating, enthusiasm or high pressure salesmanship by itself does not constitute fraud.

A scheme to defraud can exist even in the absence of an absolute misstatement as to a single fact if the promotional material and sales representation, when considered in its entirety, can be found to have been intentionally designed to mislead those exposed to it.

The government is not required to prove that the alleged scheme to defraud existed over the whole course of time set forth in the indictment. It is sufficient if you find that at any time within that period all of the elements of the alleged scheme to defraud have been proven to your satisfaction beyond a reasonable doubt.

The fact that the government may not have proved that the scheme to defraud was carried on as early or as long as the indictment alleges is not of any importance so far as the elements of the crime are concerned.

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Under this first element, it is enough that such a scheme existed. It is not necessary for the government to prove that any of the purchasers actually suffered damage.

If you find that a false statement was made, you must further find that it was false at the time it was made. Hindsight is not the measuring rod in this case.

If you do not find beyond a reasonable doubt that a scheme existed to defraud purchasers of land at Rio Rancho, which included either a false claim as to the investment value of the purchase or a false claim as to the direction and extent of the growth of Albuquerque, you must acquit the defendants.

The second element which you must find beyond a reasonable doubt is that each defendant knowingly and wilfully participated in the aforesaid scheme or fraudulent conduct with intent to defraud.

You may find that a defendant acted knowingly and wilfully if he acted voluntarily and purposely and with specific intent ot do something which the law forbids, that is to say, that he must have acted with evil motive or bad purpose to disobey or to disregard the law and not because of negligence, mistake, inadvertence or other innocent reason.

It is obviously impossible to ascertain or prove directly what a person knew or intended. You cannot look into a person's mind and see what his intentions were or what he knew. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case as to a person's actions and statements enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing or not doing certain things in the state of his knowledge.

It is not required that each of the schemers participate in or had knowledge of all of the operations of the scheme. The guilt of the schemer is not governed by the extent of his participation. It is not necessary that all schemers have participated in the alleged scheme from its inception.

A person who comes in at a later point with knowledge of the scheme's general operation, although not necessarily all of its details, and who intentionally acts in a way to further the unlawful goals becomes a member of the scheme and is legally responsible for all that may be or has been done in furtherance of the criminal objective.

Even if a defendant participated in the scheme to a degree less than that of his fellow schemers, he is equally culpable, as long as he became a member of the scheme with knowledge of its general scope and purpose. Nor is it necessary that a defendant receive pecuniary benefit from this participation in the scheme, as long as he, in fact, was a meber of the scheme.

Since some of the defendants here are corporations, it seems appropriate at this point in the charge to mention the subject of a corporation's responsibility.

Your problem, of course, is to determine whether this corporation has done the things charged in the indictment by virtue of and through the acts of its officers, directors, employees or agents.

A corporation is held responsible for the acts and statements of such persons when such acts and statements are performed or made within the scope of their express or apparent authority, and this responsibility exists even though such statements or actions are in violation of the law.

It is not necessary for a finding of such authority that an officer, director or employee be specifically authorized or instructed to commit the particular acts or to make the particular statements. Apparent authority is the power an outsider would normally assume a person would possess judging from his position and the general scope of his known functions.

Since an essential element of the crime is a specific intent to defraud, it follows that good faith is a complete defense to the crime of mail fraud.

However misleading or deceptive a plan may be, the use of the mails in connection with such a scheme does not constitute a crime if the plan was devised in good faith.

However, there is no burden on the defendant to prove good faith. Rather, the burden is on the government to prove fraudulent intent and by that token to prove bad faith on the part of the defendant beyond a reasonable doubt.

The defendants have offered testimony of good faith to negative the proof offered by the government to satisfy its burden on this element.

In other words, you consider all the testimony and from that testimony determine whether the government has sustained its burden of proof.

No amount of honest belief on the part of a defendant that the enterprise will ultimately succeed and that no one will suffer any loss excuses fraudulent actions.

Finally, we consider the third element, the use of the mails in furtherance of the scheme to defraud.

The use of the mails must involve the sending of items from or into the Southern District of New York.

I charge you as a matter of law that the Southern District of New York includes Manhattan and Bronx counties.

It will occur to you that there is no proof that each defendant himself or itself actually mailed or received in the mail any of the twenty items referred to in the twenty counts which charge mail fraud. It is sufficient to establish this element of the crime if the testimony justifies a finding that a defendant caused the mailing by others.

When one does an act with the knowledge that the use of the mails will follow in the ordinary course of business, or where such use of the mails can reasonably be foreseen, then a defendant causes the mails to be used.

The mailed matter need not disclose on its face a fraudulent representation, but need only be intended to further or assist in carrying out the scheme to defraud.

With respect to the use of the mails, the government must establish beyond a reasonable doubt the particular mailing charged in each count of the indictment.

The mailing in eighteen of the twenty counts is claimed to consist of eighteen purchasers sending their payments to the Chemical Bank in New York.

Count 36 involves the mailing of a letter from Rio Rancho Estates to a purchaser.

Count 41 involves the mailing of a letter from ATC Realty Corporation to a purchaser.

I am not going to detail each of the counts, but I will give you this resume of the counts so you will have it before you and know the particular transactions that you will be discussing.

You must determine whether the payments and letters referred to in the indictment were delivered by mail and in the case of payments to the Chemical Bank, and as to Count 36 to Samual Hoffman, and as to Count 41 to Lillian Sader, and whether this was caused directly or indirectly by a defendant to further the scheme to defraud.

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by J May